

No. 3378

United States
Circuit Court of Appeals
For the Ninth Circuit. 13

ALASKA MINES CORPORATION, a Corporation,
tion,

Appellant,

vs.

HERBERT GREENBERG,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska, Second Division.

FILED

SEP 29 1919

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

ALASKA MINES CORPORATION, a Corpora-
tion,

Appellant,

vs.

HERBERT GREENBERG,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska, Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Affidavit of O. D. Cochran.....	125
Affidavit of Hugh O'Neill	129
Amended Reply	63
Answer	24
Answer to Motion for Order Directing that George K. McLeod be Made Party Plain- tiff to Action	97
Assignment of Errors	175
Bill of Exceptions.....	95
Certificate of Clerk U. S. District Court to Transcript of Record.....	182
Citation on Appeal	184
Complaint	1
Decree	90
Demurrer	22
 DEPOSITIONS ON BEHALF OF PLAIN- TIFF:	
GILMORE, WILLIAM A.....	139
GREENBERG, HERBERT	132
Cross-examination	134
Redirect Examination	135

	Index.	Page
EXHIBITS:		
Exhibit "A" Attached to Complaint—Mortgage Dated April 17, 1917, Between Alaska Mines Corporation and Herbert Greenberg		9
Exhibit "B" Attached to Answer—Complaint		34
Exhibit "C" Attached to Answer—Affidavit of George K. McLeod		37
Exhibit "D" Attached to Answer—Writ of Attachment		57
Exhibit "E" Attached to Answer—Notice of Attachment		59
Exhibit "F" Attached to Answer—Return of Sheriff Showing Service of Writ of Attachment		61
Plaintiff's Exhibit "A" Attached to Answer to Motion for Order Directing that George K. McLeod be Made Party Plaintiff to Action—Agreement Dated April 17, 1917, Between Herbert Greenberg and Alaska Mines Corporation..		99
Plaintiff's Exhibit "B" Attached to Answer to Motion for Order Directing that George K. McLeod be Made Party Plaintiff to Action—Agreement Dated October 9, 1914, Between George K. McLeod and Herbert Greenberg.....		111
Plaintiff's Exhibit "B"—Letter from William A. Gilmore to Empire Trust Company		140

Index.

Page

EXHIBITS—Continued:

Plaintiff's Exhibit "C" Attached to Answer to Motion for Order Directing that George K. McLeod be Made Party Plaintiff to Action—Promissory Note Dated April 17, 1919, Alaska Mines Corporation to Herbert Greenberg.....	117
Plaintiff's Exhibit "C"—Telegram Dated Jan. 15th, Empire Trust Company to William A. Gilmore.....	142
Plaintiff's Exhibit "D" Attached to Answer to Motion for Order Directing that George K. McLeod be Made Party Plaintiff to Action—Letter Dated April 17, 1917, George K. McLeod to Herbert Greenberg	118
Plaintiff's Exhibit "D"—Letter Dated January 15, 1918, M. J. Vance to William A. Gilmore	144
Plaintiff's Exhibit "E" Attached to Answer to Motion for Order Directing that George K. McLeod be Made Party Plaintiff to Action—Order Discharging Lien of Attachment.....	119
Plaintiff's Exhibit "E"—Letter Dated January 15, 1918, Walter S. Reed to Empire Trust Company	146
Plaintiff's Exhibit "F"—Letter Dated January 24, 1918, Beekman, Menken & Griscom to William A. Gilmore.....	148

	Index.	Page
EXHIBITS—Continued:		
Plaintiff's Exhibit "G"—Night Lettergram Dated February 1, 1918, William A. Gilmore to Beekman, Menken & Gris- com		151
Plaintiff's Exhibit "H"—Telegram Dated February 2, 1918, Beekman, Menken and Griscom to William A. Gilmore..		152
Plaintiff's Exhibit "I"—Night Lettergram, Dated February 6, 1918, Beekman, Men- ken and Griscom to William A. Gil- more		153
Plaintiff's Exhibit "J"—Telegram, Will- iam A. Gilmore to Beekman, Menken and Griscom		154
Plaintiff's Exhibit "K"—Night Letter- gram Dated February 8, 1918, Beek- man, Menken and Griscom to William A. Gilmore		156
Plaintiff's Exhibit "L"—Telegram Dated February 20, 1918, Beekman, Menken and Griscom to William A. Gilmore..		157
Plaintiff's Exhibit "O"—Order of Release		160
Findings of Fact and Conclusions of Law.....		67
Judgment		90
Minutes of Court—February 15, 1919—Order Granting Leave to Amend Original An- swer by Interlineations by Clerk.....		62
Motion for Continuance		124
Motion for Order Directing that George K. Mc- Leod be Made Party Plaintiff to Action...		95

Index.	Page
Order Allowing Appeal.....	170
Order Approving Bond	174
Order Extending Time to Docket Appeal.....	181
Order Overruling Demurrer	23
Petition for Order Allowing Appeal.....	168
TESTIMONY ON BEHALF OF PLAINTIFF:	
BURROUGHS, E. W.	159
COCHRAN, O. D.	164
O'NEILL, HUGH	159
Cross-examination	160
POWELL, MORTON	158
Undertaking on Appeal	171

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Complaint.

Plaintiff complains of defendant and for cause of action alleges:

1.

That said defendant, Alaska Mines Corporation, is a corporation organized and existing under the laws of the State of Virginia, and is authorized to and is transacting business in the Territory of Alaska.

2.

That heretofore, to wit, on the 17th day of April, 1917, for value received, the defendant corporation by James Gayley, its president, thereunto duly authorized, made, executed and delivered to Herbert Greenberg, plaintiff herein, its series of three certain promissory notes in words and figures following, to wit:

SCHEDULE "A."

\$5,000.00.

New York, April 17, 1917.

On or before June 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of

Manhattan, City of New York, the sum of five thousand dollars (\$5,000.00) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION,
By JAMES GAYLEY, President. [1*]

SCHEDULE "A"—2.

\$10,000.00.

On or before November 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Ten Thousand Dollars (\$10,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay as attorney's

*Page-number appearing at foot of page of original certified Transcript of Record.

fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION,
By JAMES GAYLEY,
President.

SCHEDULE "A"—3.

\$25,000.00.

On or before January 15th, 1918, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of twenty-five thousand dollars (\$25,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid

on the day when due, and the default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

3.

That contemporaneously with the execution and delivery of said promissory notes the said defendant, to secure the payment thereof, made, executed and delivered to plaintiff a certain indenture of mortgage of real and personal property situated in the Cape Nome Recording Precinct, Territory of Alaska, Second Division, a true copy of which said mortgage is hereto annexed, made a part of this complaint, and marked Exhibit "A." [2]

4.

That at the time of the execution of said mortgage the said defendant was and still is the owner of the real and personal property described in said mortgage and thereby mortgaged to plaintiff.

5.

That said mortgage was duly executed by the said defendant in the presence of two witnesses who signed the same as witnesses thereto, and was duly acknowledged by the said defendant, Alaska Mines Corporation, by its said President James Gayley, who was thereunto duly authorized before a notary public so as to entitle it to be recorded, and at the time of the execution of said mortgage there was attached thereto the affidavits of Walter S. Reed, the Secretary of said corporation mortgagor, who was thereunto duly authorized, and Herbert Greenberg, the mortgagee

therein named, which said affidavits were to the effect that said mortgage was made in good faith to secure the amount named therein and without any design to hinder, delay or defraud creditors.

6.

That said mortgage was thereafter on the 11th day of June, 1917, filed for record and recorded in the office of the recorder of deeds and mortgages of Cape Nome Precinct, Territory of Alaska, Second Division, in Volume 193, page 154, and was also on the 10th day of August, 1917, filed in said office as a chattel mortgage and ever since has been and now is on file therein.

7.

That the said defendant, Alaska Mines Corporation, has not paid said promissory notes in said mortgage set out and designated "Schedule A," "Schedule A-2" and "Schedule A-3," except the promissory notes marked "Schedule A" and "Schedule A2"; and that no part of said promissory note designated and marked "Schedule A3," or any interest due thereon, has been paid, except the sum of \$2,500.00 on the 17th day of April, 1917, and the same is now and for a [3] long time past has been due and payable from the defendant to the plaintiff.

8.

That notice and demand in writing were duly served on said defendant corporation by plaintiff as provided in said mortgage after said promissory note marked "Schedule A3" became due, and a period of more than sixty days has elapsed since said notice and demand in writing were so served as aforesaid, and said defendant has been and still is in default of

the payment thereof and no part of said promissory note designated "Schedule A3," or any part of the interest accrued thereon, has been paid except as above stated, and the whole thereof with interest is now due, owing and unpaid from the defendant to the plaintiff.

9.

That the personal property mentioned and described in said mortgage is now in the possession of the said defendant, its agents and bailees in the Precinct, Territory and Division aforesaid.

10.

That plaintiff is the lawful owner and holder of said mortgage and said promissory note designated "Schedule A3."

11.

That no proceedings have been had at law or otherwise for the recovery of said sum and interest due on said promissory note marked "Schedule A3," or any part thereof.

12.

That the sum of Three Thousand (\$3,000.00) Dollars is a reasonable sum to be allowed the plaintiff for attorney's fees, for the commencement and prosecution of this action to foreclose said mortgage.

And for a further and separate cause of action against the said defendant plaintiff alleges:

1.

Plaintiff realleges and reaffirms and adopts as a part [4] of this cause of action all the foregoing allegations of this complaint.

2.

That the personal property described in and cov-

ered by the said mortgage hereto annexed, marked Exhibit "A" and made a part of this complaint and of this count and cause of action, is now in the possession of the defendant, Alaska Mines Corporation, its agents and bailees, in the said Cape Nome Precinct, Territory of Alaska, Second Division.

3.

That the plaintiff by reason of the breach of the conditions of the aforesaid mortgage is lawfully entitled to the possession thereof by virtue of having a special property therein created by and by reason of said mortgage and the nonpayment of the said promissory note marked "Schedule A3" mentioned therein.

4.

That the said personal property is wrongfully detained by the defendant although plaintiff is entitled to the immediate possession of the same as aforesaid.

5.

That the alleged cause of the detention thereof according to the best knowledge, information and belief of plaintiff is because the said defendant claims to be the owner thereof.

6.

That said personal property has not been taken for a tax, assessment or fine, pursuant to any statute, or seised under an execution or attachment against the property of the plaintiff.

7.

That the value of said personal property is Thirty Thousand (\$30,000.00) Dollars.

WHEREFORE plaintiff prays judgment against the defendant:

First. For judgment against the said defendant, Alaska Mines Corporation, a corporation, for the sum of Twenty-two [5] Thousand Five Hundred (\$22,500.00) Dollars, together with interest thereon from the 17th day of April, 1917, at the rate of six per cent per annum, for the sum of Three Thousand (\$3,000.00) Dollars attorney's fees and costs of suit.

Second. That said mortgage herein mentioned and hereto annexed be foreclosed in the manner provided by law, and the real and personal property therein described sold in the manner provided by law, and the proceeds thereof applied to the payment of the amount found due to the plaintiff on said promissory note designated "Schedule A3," together with interest, attorney's fees and costs, and that any surplus be delivered to the said defendant.

Third. For the recovery of the possession immediately of the personal property described in said mortgage and the subsequent sale thereof to satisfy the plaintiff's demand.

Fourth. To all other relief to which the plaintiff in equity may be entitled, including costs of suit.

J. F. HOBBS,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

J. F. Hobbes, being first duly sworn, deposes and says:

That he is the attorney for the above-named plaintiff, that he prepared the foregoing complaint, knows the contents thereof, and that the same is true as he verily believes.

That the reason why this complaint is not verified by the plaintiff is because said plaintiff is without the Territory of Alaska and is unable to verify to same.

J. F. HOBBS.

Subscribed and sworn to before me this 18th day [6] of April, 1918.

[Notarial Seal] M. WARD GRIFFITH,
Notary Public, Territory of Alaska, Residing at Nome.

My commission expires August 15th, 1920. [7]

Exhibit "A."

#65687.

THIS INDENTURE OF MORTGAGE made and entered into this 17th day of April, 1917, between Alaska Mines Corporation, a corporation organized and existing under and pursuant to the laws of the Commonwealth of Virginia, party of the first part (hereinafter referred to as the "Mortgagor"), and Herbert Greenberg, of Nome, Alaska, party of the second part (hereinafter referred to as the "Mortgagee"), WITNESSETH:

The Mortgagor, for and in consideration of the sum of One Dollar (\$1.00) or other valuable considerations to it in hand paid by the Mortgagee, the receipt whereof is hereby acknowledged, and in order to secure the payment to the Mortgagee of the sum of Forty Thousand dollars (\$40,000) as evidenced by three promissory notes in writing, aggregating said sum, made, and executed and delivered by the Mortgagor to the Mortgagee, all bearing even date here-

with, copies of which are hereto annexed, marked "Schedule A," does hereby grant, bargain, sell, and convey unto the Mortgagee, his heirs, executors, administrators and assigns, all of the following described real and personal property situate in the Cape Nome Mining District, Seward Peninsula, Territory of Alaska;

An undivided fifty-one per cent, interest in The Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River, together with a dredge hull and all timbers, steel, iron, bolts and appliances purchased for the same, situated on said The Holyoke No. 2 Claim on Holyoke Creek or stored for said hull, and wherever situated.

TO HAVE AND TO HOLD the above granted premises unto the Mortgagee, his heirs, executors, administrators and assigns forever. The above property being the same property conveyed and transferred by the Mortgagee to the Mortgagor by deed and bill of sale bearing even date herewith, this mortgage and the notes secured hereby being given to secure payment of a part or portion of the purchase money consideration paid for said property. Provided always that if the Mortgagor or its successors and assigns shall pay unto the Mortgagee or his heirs, executors, administrators and assigns, the said sums of money mentioned in the aforesaid promissory notes and the interest thereon, at the time and in the manner mentioned in the said promissory notes, then and in that event these presents and the estate hereby granted shall cease, determine and become void.

And the parties hereto covenant and agree as follows:

FIRST: That the Mortgagor will pay the indebtedness as provided in this mortgage, and if default be made in the payment of any note, and such default shall continue for a period of sixty days after notice and demand in writing, then and in such event all of said notes immediately and forthwith shall become due and payable, and it shall be lawful for the Mortgagee, his heirs, executors, administrators, and assigns, to take immediate possession of all the personal property hereinbefore conveyed and transferred, and sell the same at public sale in the manner provided by law, and apply the proceeds as far as may be, to the payment of the amount then due, together with the costs and expenses of sale, including all reasonable expense of taking possession of, keeping and caring for said personal property. The United States Marshall of the Second District of the District of Alaska is hereby authorizes to execute the power of sale herein granted to said Mortgagee, his heirs, executors, administrators and assigns, or in case of such default and its continuance as aforesaid, the Mortgagee may proceed to foreclose this mortgage by suit at law in any court of competent jurisdiction. Notwithstanding this mortgage, the real and personaly property hereinbefore mentioned may remain in possession of the Mortgagor until default and its continuance as aforesaid.

SECOND: That if default be made in the payment of any of said notes when due, the said default shall continue for a period of sixty days after notice and demand in writing, or if default shall be made in the

payment of any interest, taxes, or assessments and such default shall continue for a period of sixty days after like notice and demand, then and in such *even* all of said notes immediately and forthwith shall become due and payable and the Mortgagee shall have power to sell the realty herein described according to law, and that upon such default, and its continuance as *foresaid*. [8] The Mortgagee shall have the right forthwith to enter upon the mortgaged premises, receive all of the proceeds, rents, issues, and profits therefrom and apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said proceeds, rents, issues, and profits are, in the event of such default, and its continuance as *aforesaid*, hereby assigned to the Mortgagee.

THIRD: That the Mortgagee shall have the right upon any such default and the continuance of such default as *aforesaid*, and upon the commencement of any proceedings to foreclose this mortgage, to apply for and shall be entitled, as a matter of right without consideration of the value of the mortgaged premises as security for amounts due the Mortgagee or of the solvency of any person or persons liable for the payment of such amounts to the appointment of a receiver of the rents, issues, and profits or other proceeds from the real property above mortgaged.

FOURTH: That the Mortgagee may at his option, pay any lawful tax, charge, or assessment upon said property and said payment together with expenses incurred in connection therewith shall become *part*y of the principal sum due from the Mortgagor to the Mortgagee;

FIFTH: That any notice required herein to be given by the Mortgagee to the Mortgagor may be either personally served or be served by mail through the United States postoffice by registered letter addressed to the Mortgagor at its principal place of business in the Territory of Alaska, or its office in the Borough of Manhattan, City of New York, or it may be served upon the agent of the Mortgagor appointed in Alaska pursuant to statute.

SIXTH: That the Mortgagor shall pay over to the Mortgagee fifteen per cent of all gold yielded or produced through any mining or dredging operations upon the property herein described, as said yield or production occurs, and that the Mortgagee shall apply said gold at its then value in gold coin of the United States of America, as a payment or payments in reduction of the amounts then due to the Mortgagee from the Mortgagor by reason of the above mentioned promissory notes, the said amounts being credited upon said promissory notes in the order of their maturity.

SEVENTH: That this mortgage is intended to cover not only the dredge herein described with all the appurtenances thereto, now located upon the real property hereinbefore described, but also any and all improvements and additions to said dredge and its appurtenances and to each and every and all the parts thereof, and as said additions, changes, alterations, and improvements are made they, by virtue of this mortgage, shall become a part of said dredge and shall not be removable therefrom and shall become subject to this mortgage.

IN WITNESS WHEREOF, the ALASKA MINES CORPORATION has caused these presents to be executed in triplicate by its President and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

ALASKA MINES CORPORATION,
By JAMES GAYLEY,
President.

[Corporation Seal]

Attest: WALTER S. REED,

United States of America,
Southern District of New York,
County of New York,—ss.

On this 17th day of April, 1917, before me, a Notary Public in and for the County of New York, personally appeared James Gayley and Walter S. Reed, each of whom is to me personally known, and known to me to be the persons who executed the foregoing instrument, the said James Gayley as the President of the Alaska Mines Corporation and the said Walter S. Reed as the Secretary of the Alaska Mines Corporation, and they severally acknowledged to me that they executed the foregoing Mortgage of both real and personal property in the name of, and as the act and deed of the Alaska Mines Corporation, and by its authority and that they so executed the same freely and voluntarily and for the uses and purposes therein mentioned. [9]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year

in this certificate above written.

[Notarial Seal] JOHN H. GEWECKE,
Notary Public, King County, No. 23, Certificate filed
in New York County. No. 44. Kings County
Register's No. 8024, New York County Regis-
ter's No. 8054.

Commission expires Mar. 30, 1918.

State of New York,
County of New York,—ss.

No. 42780, Series B.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that John H. Gewecke, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and therein written, was, at the time of taking such deposition or proof and acknowledgment, a Notary Public acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proof of Deeds, or conveyances for land, tenements, or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings, with his autograph signature. And further, that I am well acquainted with the handwriting of such *Notary* Public and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto

set my hand and affixed the seal of said Court and County this 17th day of April, 1917.

[Notarial Seal] WILLIAM F. SCHNEIDER,
Clerk.

United States of America,
Southern District of New York,
County of New York,—ss.

Walter S. Reed, being first duly sworn, on oath, deposes and says: That he is Secretary of the Alaska Mines Corporation, which is a corporation and the mortgagor named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

WALTER S. REED.

Subscribed and sworn to before me this 17th day of April, 1917.

[Notarial Seal] JOHN H. GEWECKE,
Notary Public, Kings County, No. 23, Certificate Filed
in New York County No. 44, Kings County Reg-
esters' No. 8024. New York County Register's
No. 8054.

Commission expires Mch. 30, 1918.

State of New York,
County of New York,—ss.

No. 42781, Series B.

I, William F. Schneider, Clerk of the Court of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that John H. Gewecke, whose name is subscribed to the deposition or certifi-

cate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition or proof and acknowledgment, a Notary Public acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements, or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings, with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County this 17 day of April, 1917.

[Notarial Seal] WM. F. SCHNEIDER,
Clerk. [10]

United States of America,
Southern District of New York,
County of New York,—ss.

Herbert Greenberg, being first duly sworn on oath, deposes and says: That he is the mortgagee named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein and without any design to hinder, delay or defraud creditors.

HERBERT GREENBERG.

Subscribed and sworn to before me this 17th day of April, 1917.

[Notarial Seal] WM. E. CONLEY,
Notary Public in and for the County and State of
New York. #155.

My commission expires March 30, 1919.

State of New York,
County of New York,—ss.

No. 42826, Series B.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that Wm. E. Conley, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written was, at the time of taking such deposition or proof and acknowledgment, a Notary Public in and for such county, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proof of deeds, of conveyances for land, tenements or hereditaments in said State of New York, and further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and

County, the 17 day of April, 1917.

[County Seal]

WM. F. SCHNEIDER,
Clerk.

SCHEDULE "A."

\$5,000.00.

New York, April 17, 1917.

On or before June 15th, 1917, for value received, the undersigned, ALASKA MINES CORPORATION, promises to pay to HERBERT GREENBERG or order at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of five thousand dollars (\$5,000.00) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

SCHEDULE "A"—2.

\$10,000.00.

On or before November 15th, 1917, for value received, the undersigned, ALASKA MINES CORPORATION, promises to pay to HERBERT GREENBERG, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Ten Thousand Dollars (\$10,000), with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay as attorney's fees thereon, such additional sum as the Court may adjudge reasonable. [11]

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

Schedule "A"—#3.

\$25,000.00.

On or before January 15th, 1918, for value received, the undersigned, ALASKA MINES CORPORATION promises to pay to HERBERT GREENBERG, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of

New York, the sum of Twenty-five Thousand dollars (\$25,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, *od* even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

Recorded June 11, 1917, 9:40 A. M., at request of W. A. Gilmore.

JAMES FRAWLEY,

Recorder.

United States of America,
Territory of Alaska,
Cape Nome Precinct,—ss.

I, Hugh O'Neill, United States Commissioner and Ex-officio Recorder in and for the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska,—

DO HEREBY CERTIFY, that I have compared the foregoing Mortgage with the original thereof, and the same is a true, and correct copy of said origi-

nal, and the whole thereof as the same appears of record in my office in Vol. 193 at page 154; that the said Mortgage was also filed as a Chattel mortgage on the 10th day of August, 1917, and is numbered 65828.

[Commissioner's Seal] HUGH O'NEILL,
U. S. Commissioner and Ex-officio Recorder. [12]

[Endorsed]: No. 2779. In the District Court for the District of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 18, 1918. Thos. McGann, Clerk. By W. C. McG., Deputy. J. F. Hobbes, Attorney for Plaintiff. [13]

*In the District Court for the District of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
Defendant.

Demurrer.

Comes now the defendant above named and demurs to the complaint of the plaintiff filed herein, for the reason that said complaint does not state facts

sufficient to constitute a cause of action.

O. D. COCHRAN,

Attorney for Defendant.

Service by receipt of copy admitted May 18, 1918.

J. F. HOBBS,

Atty. for Plf.

[Endorsed]: No. 2779. In the District Court for the District of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, Defendant. Demurrer. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 20, 1918. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant. [14]

287

JOURNAL OF THE DISTRICT COURT OF THE
TERRITORY OF ALASKA, SECOND DIVI-
SION.

Honorable WM. A. HOLZHEIMER, District Judge.
Saturday, June 15, 1918, 11 A. M.

* * * * *

2779.

HERBERT GREENBERG

vs.

ALASKA MINES CORPORATION.

Order Overruling Demurrer.

O. D. Cochran, on behalf of defendant, submitted demurrer without argument. Overruled, and defend-

ant granted seven days to answer.

Whereupon court adjourned until 11 A. M. Saturday, June 22, 1918. [15]

*In the District Court for the District of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
Defendant.

Answer.

Comes now the defendant Alaska Mines Corporation, and answering the complaint of the plaintiff, admits, denies and alleges:

I.

The defendant admits the allegations contained in paragraphs 1, 2, 3, and 4, of plaintiff's complaint.

II.

Answering paragraph 5 of said complaint, the defendant denies that the mortgage referred to in said paragraph was executed by the defendant in the presence of two witnesses who signed the same as witnesses thereto, and otherwise admits the allegations contained in said paragraph five of said complaint.

III.

The defendant admits the allegations contained in

paragraph 6 of plaintiff's complaint. [16]

IV.

The defendant admits the allegations contained in paragraph 7 of plaintiff's complaint, except as hereinafter affirmatively alleged.

V.

Answering paragraph 8 of said complaint, the defendant alleges that on the 11th day of January, 1918, at its main office at 71 Broadway in New York City, New York, it received the following notice from the Empire Trust Company, a banking institution in the City of New York, to wit:

“New York, January 10, 1918.

Alaska Mines Corporation,

71 Broadway,

New York City.

Gentlemen:

Kindly be advised that we hold note drawn by you under date of April 17th, 1917, in the amount of \$25,000, which becomes due and payable on or before January 15th, 1918.

Payment of \$2,500 has been made on this note as of April 17th, 1917.

Will you kindly give this matter your attention, and oblige,

Very truly yours,

(Signed) EUGENE MILLER,

Assistant Secretary.”

and except as before alleged and hereinafter admitted and alleged, defendant denies the allegations of said paragraph 8 of said complaint.

VI.

Defendant admits the allegations contained in paragraph 9 of said complaint. [17]

VII.

Defendant admits the allegations contained in paragraphs 10 and 11 of said complaint, except as qualified in the affirmative allegations hereinafter contained in this answer.

VIII.

The defendant denies the allegations contained in paragraph 12 of said complaint.

IX.

Defendant answering the further and separate cause of action alleged in said complaint, admits, denies and alleges:

X.

The defendant realleges, reaffirms and adopts its answer to paragraphs numbers 1 to 12, inclusive, of plaintiff's first cause of action alleged in his complaint, as hereinbefore stated.

XI.

The defendant admits the allegations contained in paragraph 2 of plaintiff's second and further cause of action alleged in said complaint.

XII.

Answering paragraphs 3 and 4 of plaintiff's second and further cause of action alleged in said complaint, defendant denies generally each and every allegation therein contained.

XIII.

The defendant admits the allegations contained in paragraphs 5, 6, and 7, of plaintiff's second and fur-

ther [18] cause of action alleged in said complaint.

XIV.

The defendant further answering plaintiff's complaint alleges that the defendant has and maintains its principal business office at 71 Broadway, New York City, State of New York; that heretofore and on the 11th day of January, 1918, one George K. McLeod served upon the defendant, by delivering to one Walter S. Reed, Secretary and Treasurer of said defendant, at the office of said defendant in New York City, a notice in words and figures as follows:

“January 11th, 1918.

Alaska Mines Corporation,
71 Broadway,
New York City.

Gentlemen:

You will please take notice, that heretofore and by a written instrument, the original of which I am showing you at the time of the delivery of this letter, Herbert Greenberg assigned to me 11/40ths of the notes and bonds and mortgages made by you and dated on or about April 17th, 1917, for \$40,000.00, which said mortgage is a lien upon the following property, including any and all improvements thereon, to wit: ‘Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River; said mortgage covering also the hull of a dredge on said claim; all of which claim is in the Cape Nome Mining and Recording District, District of Alaska, Second Division.’

The above assignment covers 11/40th share of [19] the note of \$25,000, due January 15th, 1918.

You are hereby requested to pay to me, as the same may become due, the above percentage, to wit, 11/40ths, of any and all bonds or notes and interest thereon secured by said mortgage aforesaid.

Yours very truly,

(Signed) GEORGE K. McLEOD."

That at the time of the serving of said notice upon the said defendant, said George K. McLeod exhibited to the said Walter S. Reed, Secretary and Treasurer of the said defendant, a written instrument signed by the plaintiff herein and the said George K. McLeod, dated on the 17th day of April, 1917, which said instrument was acknowledged by the said George K. McLeod and the said Herbert Greenberg, a copy of which said instrument is hereunto annexed marked Exhibit "A," attached to Exhibit "C" and made a part of this answer.

XV.

That by the terms of said agreement signed by the said George K. McLeod, and the said Herbert Green-
plaintiff
berg, the ~~defendant~~ herein, the said George K. McLeod became and now is the owner of an undivided 11/40ths interest in the identical note and mortgage set forth in plaintiff's complaint.

XVI.

That heretofore and on the 15th day of January, 1918, the said George K. McLeod commenced an action in the Supreme Court, County of New York, in the State of New York, against the said plaintiff

herein, in which said action the said George K. McLeod alleges that the plaintiff herein is indebted to him the said George K. McLeod, in the sum of [20] \$4,657.50, which said action was commenced in the said court by the said George K. McLeod filing a complaint therein, a copy of which said complaint is hereunto attached and marked Exhibit "B" and made a part of this answer.

XVII.

That thereafter and on the said 15th day of January, 1918, said George K. McLeod, in the said Supreme Court, County of New York in the state of New York, in the said action of George K. McLeod
plaintiff
against the ~~defendant~~ herein, duly filed in said court an affidavit of attachment, a copy of which said affidavit of attachment is hereto attached and marked Exhibit "C" and made a part of this answer.

XVIII.

That thereafter and on the said 15th day of January, 1918, a summons in due form of law was regularly issued to the defendant Herbert Greenberg, in said action of George K. McLeod against the said Herbert Greenberg, in the said Supreme Court of New York, County of New York, and that the said Herbert Greenberg duly appeared in said action in said Supreme Court, County of New York.

XX.

That thereafter such proceedings were had in said Supreme Court, county of New York, in said action of George K. McLeod against Herbert Greenberg, that a writ of attachment was issued out of said court

in said cause, to the sheriff of the county of New York, State of New York, commanding said sheriff to attach and safely keep so much of the property of Herbert Greenberg, the defendant, within said county of New York, as would satisfy plaintiff's demand of [21] \$4,657.50, a copy of which said writ of attachment is hereto annexed and marked Exhibit "D" and made a part of this answer.

XXI.

That thereafter and on said 15th day of January, 1918, said sheriff for the county of New York, duly served upon the defendant herein, a notice of attachment, together with a copy of said writ of attachment, which said notice of attachment is hereto attached marked Exhibit "E" and made a part of this answer: that a copy of the return of said sheriff showing service of said writ of attachment upon the defendant herein, is also attached hereto and marked Exhibit "F" and made a part of this answer.

XXII.

That said Supreme Court for the county of New York State of New York, is a court of general jurisdiction, and that the said action of George K. McLeod against the said Herbert Greenberg is still pending in said court and undisposed of by said court, and that said attachment so issued out of said court and so levied against the property of said Herbert Greenberg, in hands of the defendant herein, is in full force and effect and has not been released, modified, vacated or set aside.

XXIII.

That said Supreme Court for the county of New

York, State of New York, has jurisdiction over the parties in said action of George K. McLeod against the said Herbert Greenberg, and has jurisdiction of the subject matter of said action.

XXIV.

That by reason of the foregoing facts the said George [22] K. McLeod has, or claims, an interest in the said note and mortgage sued upon in this action, and in the subject matter of this action, and is proper and necessary part in this action.

XXV.

Further answering plaintiff's complaint, defendant alleges that on the 15th day of January, 1918, upon the date the said promissory note sued upon herein became due, Mr. Walter S. Reed, Secretary and Treasurer of the defendant, tendered to the Empire Trust Company, a banking institution

its check drawn on Empire Trust Co. and payable to Empire Trust Com.,
in the city of New York, A the sum of ^{W. C. McG.}
^{Deputy}
\$23,512.50, in payment of the unpaid balance ^{Clerk,}
^{2/15/19.}

due upon said date upon the promissory note sued upon herein, which said sum of \$23,512.50 included all of the interest due upon said promissory note upon that day; that said Empire Trust Company, at said time, held said promissory note for collection under authority given it by the plaintiff herein; that defendant had on deposit with said Empire Trust Company at the time of said tender, and subject ^{W. C. McG.}
^{Deputy}
to its check, a sum of money in excess of ^{Clerk,}
^{2/15/19.}
\$24,000.00.

XXVI.

That at the time of tendering of said payment to

said Empire Trust Company as aforesaid, and for the purposes aforesaid, the defendant herein through its said secretary and treasurer, explained to said Empire Trust Company that a satisfaction of the mortgage securing the said promissory note was required inasmuch as the said promissory note was the last one of a series of notes secured by said mortgage, and for the additional reason of the service of notice upon said defendant by one George K. McLeod, in which said notice said George K. McLeod claimed an interest in said note and mortgage. [23]

XXVII.

That the said Empire Trust Company, acting through Myron J. Brown, its secretary, advised said Walter S. Reed, acting on behalf of this defendant, that it, the said Empire Trust Company, was unable to give any satisfaction of said mortgage, and declined to accept the tender of payment of the said note.

XXVIII.

That the defendant herein has, ever since the said 15th day of January, 1918, been able and willing to pay the amount due upon said note herein

at said Empire Trust Co. in the City of New York, State of New York, W. C. McG. sued upon, and hereby offers to ~~and will~~

Deputy Clerk,
2/15/19. pay at said place
~~tender into this Court,~~ the amount legally due upon said promissory note upon the said 15th day of January, 1918, less the amount which has been attached as aforesaid in the said action of George K. McLeod against Herbert Greenberg, the plaintiff herein, in the said Supreme Court for the County of New York, State of New York, as soon as said amount so attached can be ascertained or as soon as

W. C. McG. said attachment is released, vacated or set
Deputy aside that for the purpose of the payment of
Clerk, said promissory note the defendant has ever
2/15/19. since said Jan. 15, 1918, and now has on deposit in
said Empire Trust Co. a sum of money in excess of
the amount due on said note.

WHEREFORE defendant prays that the said George K. McLeod be made a party to this action.

That the plaintiff be required to procure the release of the attachment in said action of George K. McLeod against Herbert Greenberg in the Supreme Court, County of New York, State of New York, before further prosecution of this action, and for all other and further relief to which the defendant in equity may be entitled, including costs herein incurred.

O. D. COCHRAN,
Attorney or Defendant. [24]

United States of America,
Territory of Alaska,—ss.

H. S. Thompson, being first duly sworn, deposes and says:

That he is the agent of the Alaska Mines Corporation, a corporation, the defendant herein; that he has read the foregoing answer, knows the contents thereof and the same is true as he verily believes.

H. S. THOMPSON,

Subscribed and sworn to before me this the 6th day of July, 1918.

[Notarial Seal] O. D. COCHRAN,
Notary Public in and for the Territory of Alaska.

(My commission expires on the 4th day of August, 1919.) [25]

Exhibit "B."*Supreme Court, County of New York.*

GEORGE K. McLEOD,

Plaintiff,

against

HERBERT GREENBERG,

Defendant.

COMPLAINT.

The plaintiff, complaining of the defendant, alleges:

FIRST. That the plaintiff herein is a resident of the county and State of New York; that the defendant is not a resident of the county and State of New York.

SECOND. That on the 17th day of April, 1917, the Alaska Mines Corporation, a corporation organized under the laws of the State of Virginia, made, executed and delivered to the defendant, Herbert Greenberg, *it* promissory note in writing of the following tenor and content, and the following is a true copy thereof.

SCHEDULE "A"—#2.

\$10,000.00

New York, April 17th, 1917.

On or before November 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at *Emprie* Trust Company, 120 Broadway, in the Borough of Manhattan, city of New York, the sum of Ten Thousand (\$10,000) Dollars, [26] with interest at the rate of six per centum per annum, pay-

ment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION,

By JAMES GAYLEY,

President.

That at the time of the making of said note, \$1,000 was paid thereon, leaving a balance due of \$9,000.

THIRD. That on the same date, for good, valuable and sufficient considerations (to wit, among other things, a release given by this plaintiff to said defendant from a certain agreement made between plaintiff and defendant dated October 9th, 1914, that in and by said agreement plaintiff was given by defendant a lien exceeding in amount \$13,000 upon property owned by the defendant of a value greater than said \$13,000), said defendant Greenberg, sold, assigned and transferred to this plaintiff an undivided 11/14ths interest in the aforesaid note, and at all times since [27] said date, plaintiff has been and now is the owner of said interest.

FOURTH. That for the same consideration, this

defendant agreed with this plaintiff that he would collect the principal and interest of said note, and upon receiving the proceeds thereof, he would pay over to this plaintiff 11/40ths of said principal and interest collected, plus a further sum equal to 9/40ths of said principal and interest collected, making in total one-half (1/2) of said principal and interest of said note collected. That on or about the 15th day of November, 1917, this defendant collected from and received from the Alaska Mines Corporation, the net principal of said \$9,000 on said note and the interest thereon amounting to \$315.00, making a total of \$9,315.00, and thereafter and at about said time notified and stated to this plaintiff that he had so received and had in his possession said principal and interest of said note. That thereupon this plaintiff demanded of the defendant that he deliver and pay over to him one-half (1/2) of said principal and interest so collected and received by defendant, to wit, the sum of \$4,657.50, but this defendant has at all times refused and now refused to pay over to plaintiff said sum or any part thereof, and the whole thereof remains and now is due and unpaid.

WHEREFORE, this plaintiff demands judgment against this defendant in the sum of \$4,657.50, with interest [28] from the 15th day of November, 1917, and the costs and disbursements of this action.

CLARENCE S. NETTLES,

Attorney for Plaintiff.

Office & Postoffice Address: 1476 Broadway, Manhattan, New York City, N. Y.

City and County of New York,—ss.

George K. McLeod, being duly sworn, says: That he is the plaintiff in the above-entitled action and has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

GEORGE K. McLEOD.

Sworn to before me this 15th day of January, 1918.

HENRY ALEXANDER,

Commissioner of Deeds #63,

New York City.

My commission expires May 22, 1919. [29]

Exhibit "C."

Supreme Court, County of New York.

GEORGE K. McLEOD,

Plaintiff,

against

HERBERT GREENBERG,

Defendant.

AFFIDAVIT OF GEORGE K. McLEOD.

State of New York,

County of New York,—ss.

George K. McLeod, being duly sworn, says that he is the plaintiff in this action and is a resident of the county and State of New York, and resides at the corner of 59th Street and Sixth Avenue, in the Borough of Manhattan, city of New York.

That a cause of action exists in favor of the plaintiff and against the above-named defendant for the recovery of a sum of money only as damages for a breach of an express contract, other than a contract to marry, and that said cause of action arose from and is based upon the following facts and upon the facts set forth in the complaint herein which is annexed hereto and made a part hereof with the same force and effect as tho set out herein at length. That said facts are as follows:

That plaintiff has known the defendant for more than [30] five (5) years last past, both socially and in a business way, and has had business dealings with him both in New York, Seattle, and Nome, Alaska, almost continuously during said period; that the defendant is and has been the owner of certain mining interests in Alaska and has also been a dealer in goods and supplies, and plaintiff has had almost constant dealings with defendant in regard to these matters.

That in 1914, the defendant was indebted to the plaintiff upon an agreed sum exceeding \$13,000, and on the 9th day of October, 1914, plaintiff and defendant entered into an agreement which was duly recorded in the Cape Nome Mining and Recording District, District of Alaska, Second Division. That plaintiff has not, at this time, said agreement, but can state of his own knowledge the contents thereof, to wit, that thereby the defendant sold and assigned to the plaintiff, Holyoke No. 2 Claim on Holyoke Creek hereinafter referred to, and the dredge hereinafter referred to as collateral security for the said

sum owing by defendant to the plaintiff. That on the 17th day of April, 1917, said sum exceeding \$13,000 was still owing by defendant to plaintiff and said collateral security agreement was still in full force. It cannot, however, be produced before this Court within the time necessary to make any warrant of attachment of advantage.

That in April, 1917, the defendant came to New York and stated to plaintiff that the Alaska Mines Corporation, a Virginia corporation, desired to purchase a certain mining claim known as Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River, and the hull of a dredge then on said claim, [31] and that he desired plaintiff to release the aforementioned collateral security agreement and accept a new agreement in its place. That said defendant advised with the plaintiff constantly regarding his conferences with the Alaska Mines Corporation in regard to the above matter.

That after negotiations, said Alaska Mines Corporation made and executed its three (3) certain promissory notes, each in the following form and made on the following date for the amounts following and payable at the following times:

April 17, 1917, Amount \$5,000. Payable June 15th, 1917.

April 17, 1917, Amount \$10,000. Payable November 15th, 1917.

April 17, 1917, Amounts \$25,000. Payable January 15th, 1918.

making the aggregate payment of Forty Thousand

(\$40,000) Dollars; that said form of each note is as follows:

SCHEDULE "A."

\$5,000.00. New York, April 17, 1917.

On or before June 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, city of New York the sum of Five Thousand Dollars (\$5,000), with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorneys' fees thereon, such *addition* sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of Forty Thousand Dollars (\$40,000), all secured by a certain mortgage, executed by the undersigned, of even [32] date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

SCHEDULE "A"—#2.

\$10,000.00. New York, April 17th, 1917.

On or before November 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at

Empire Trust Company, 120 Broadway, in the Borough of Manhattan, city of New York, the sum of Ten thousand dollars (\$10,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorneys' fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of Forty Thousand Dollars (\$40,000), all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

SCHEDULE "A"—#3. [33]

\$25,000.00.

New York, April 17, 1917.

On or before January 15th, 1918, for value received, the undersigned, Alaska Mines Corporation promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Twenty-five Thousand Dollars (\$25,000), with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as

attorneys' fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of Forty Thousand Dollars (\$40,000), all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

That at the same time, said Alaska Mines Corporation, to secure the payment of said notes aggregating Forty Thousand (\$40,000) Dollars, sold assigned and transferred to Herbert Greenberg, the defendant, and undivided fifty-one per cent (51%) interest in said Holyoke No. 2 Claim aforesaid, and in and to said dredge hull located on said claim.

That at the same time, and on April 17th, 1917, as [34] said notes and transfer was made between said Alaska Mines Corporation to this defendant, this plaintiff and this defendant, for a good valuable and sufficient consideration made, entered into and mutually delivered a certain agreement on said date aforesaid, a copy of which is hereto annexed and made a part hereof as tho set out herein at length. That the original of this agreement has been mailed to a Recording office in Alaska for record, but plaintiff knows and has compared the attached copy with said original and knows that it is a true copy thereof.

That the claim denominated "Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River and the hull of a dredge on said Claim" referred to in said agreement between said corporation and this defendant and referred to in the agreement attached hereto between plaintiff and defendant, is the same claim and the same dredge and the three notes aggregating Forty Thousand (\$40,000) Dollars hereinbefore referred to as made between Alaska Mines Corporation to the defendant is the bond in the sum of \$40,000, mentioned and described in the agreement between plaintiff and defendant, and are the bond and notes referred to in that paragraph of the agreement between plaintiff and defendant wherein Greenberg agrees to receive any sums on account thereof and pay over one-half ($\frac{1}{2}$) to this plaintiff. Both Exhibit "A" and Exhibit "B" refer to the same notes and mortgage.

That at the time of the making and delivery of said note dated April 17th, 1917, the principal sum of which was \$10,000 and which was due on or before November 15th, 1917, [35] the defendant gave to the Alaska Mines Corporation a credit of \$1,000 thereon, leaving a balance due of \$9,000. That on or about the 15th day of November, 1917, the defendant presented said note for \$10,000, for payment, and the Alaska Mines Corporation paid the principal and interest of said note to the said defendant Greenberg and paid him the sum of \$9,315, and the whole of the principal of said note and interest was received by the defendant Greenberg and said sum

of \$9,315.00 on account of said note was received by said Greenberg. And said Greenberg so stated and told the plaintiff, and plaintiff has also been so advised by the Alaska Mines Corporation and by its authorized representatives Mr. Walter S. Reed and Mr. E. E. Powell. That after the receipt of said sum by the defendant from the Alaska Mines Corporation, the plaintiff requested the defendant to pay to him one-half ($\frac{1}{2}$) of said amount, or the sum of \$4,657.50, but the said defendant, Greenberg, refused and failed, and has at all times failed and refused to pay the plaintiff said one-half ($\frac{1}{2}$) or any part of the principal or interest of said note, and has failed and refused to pay the plaintiff any part of said \$9,315.00 received by him, and now so refused, and the whole of said sum of \$4,657.50, with interest from the 15th day of November, 1917, is due and owing from the defendant to this plaintiff.

That all of the above facts are as aforesaid within the personal knowledge of the plaintiff, plaintiff having been present at many of the meetings and negotiations leading up to the above transaction, and having conferred with the defendant regarding them and also regarding the collection and payment [36] of the aforementioned note.

That the plaintiff in this action is entitled to recovery from the defendant on the aforesaid cause of action, said sum of \$4,657.50, with interest from the 15th day of November, 1917, over and above all counterclaims known to plaintiff.

That the defendant is a natural person and is not

a resident of the State of New York, but resides in the Town of Nome, in the Territory of Alaska.

That, as aforesaid, plaintiff has had almost continuous business dealings with the defendant in said Territory for more than five years last past, and had conferred with the defendant both at his place of business in Alaska and at his abode, and personally knows that he lives and resides in said town of Nome, and defendant has told him many times that he was and is a resident of said Territory and of said town. That at the time of his dealings with the Alaska Corporation, the defendant, to the personal knowledge of the plaintiff, described himself as of the town of Nome, Alaska.

That plaintiff has commenced this action to recover the sum of \$4,657.50, with interest from November 15th, 1917, as aforesaid, on said cause of action, and the summons herein, a copy of which is hereto annexed, has been duly issued and the warrant herein is asked for to accompany the summons.

That no previous application has been made for a warrant of attachment herein. That the agreement hereto annexed between plaintiff and defendant and heretofore referred to in this affidavit is marked and denominated Exhibit [37] "A," and the agreement and mortgage between defendant and Alaska Mines Corporation is marked and denominated exhibit "B."

GEORGE K. McLEOD.

Sworn to before me this 15th day of January, 1918.

HENRY ALEXANDER,

Commissioner of Deeds, #63, New York City.

My commission expires May 22d 1919. [38]

EXHIBIT "A."

MEMORANDUM OF AGREEMENT BETWEEN
GEORGE K. McLEOD AND HERBERT
GREENBERG.

The consideration of this agreement is the sum of One Dollar paid by each party hereto to the other, and other good and valuable considerations the receipt whereof is hereby acknowledged.

The benefits of this agreement shall enure to, and it shall be binding upon, the executors, administrators, personal representatives and assigns of the respective parties.

It is hereby mutually agreed, that the agreement between these parties dated the 9th day of October, 1914, and acknowledged before William A. Gilmore, Notary Public and duly filed for record in the Cape Nome Mining and *Record*- District, District of Alaska, Second Division, is cancelled, and that this instrument is evidence of such cancellation.

The Alaska Mines Corporation has this day made and executed to Herbert Greenberg its certain bond and mortgage in the sum of Forty Thousand (\$40,000) Dollars, which said mortgage is a lien upon the following described Real and Personal property situate in the above-mentioned District; Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River; the hull of a dredge on said claim,

which said mortgage will be recorded with the officer of the above-mentioned recording District as soon as possible; that said Greenberg has also given an option to the Alaska Mines Corporation on other properties mentioned in said agreement of the 9th day of October, 1914, and regarding the aforesaid bond and mortgage and option, the parties hereto agree as follows: [39]

Herbert Greenberg hereby assigns to George K. McLeod, and undivided eleven fortieths ($11/40$) interest in the aforesaid bond and mortgage of the Alaska Mines Corporation.

Said Greenberg hereby agrees to receive any sums paid on account of the or notes of said Corporation, and said mortgages, as trustee, and to pay over to said McLeod one-half thereof, until the sum of Eleven Thousand (\$11,000) Dollars is paid thereout to said McLeod, and if the said Greenberg received interest, he is also to pay to said McLeod interest on said Eleven Thousand (\$11,000) Dollars, or any balance remaining due at any time.

The parties agree that when said McLeod shall have received said Eleven Thousand (\$11,000) with interest *in any*, he will reconvey and release to said Greenberg said Eleven-fortieths ($11/40$) of said bond and mortgage just conveyed to him, and revest in said Greenberg all interest in said mortgage conveyed to him.

If the said Alaska Mines Corporation shall not pay the amounts due on its bond and mortgage, the following provision shall apply:

The property shall be foreclosed, and if sold to an

outsider, the proceeds shall be first applied to the payment of any balance remaining due on the Eleven Thousand (\$11,000) Dollars payable to said McLeod, with interest if any.

If the property shall be bought in either by said Greenberg or anyone in his interest, then the present lien given by the aforesaid agreement of October 9th, 1914, shall [40] be revived in favor of the said McLeod to the extent of any unpaid balance then due him, and the said Greenberg will execute, in proper form for recording, a proper instrument reviving the aforesaid lien as a first lien as it is at this time, or if he shall fail to do so or cannot do so, then he, personally, hereby agrees to pay to the said McLeod any balance then due and unpaid on account of said Eleven Thousand (\$11,000) Dollars.

If the Alaska Mines Corporation shall exercise the option hereinbefore referred to, and any sum shall then remain payable to said McLeod on account of said Eleven Thousand (\$11,000) Dollars, said Greenberg agrees to hold any payment received by him under said option as trustee to pay thereout one-half thereof to the said McLeod, until the whole of said balance due on said Eleven Thousand (\$11,000) Dollars is paid.

And if said option is not exercised, and if, through any mortgage foreclosure, there shall not have been realized sufficient to pay to said McLeod the balance of any amount due him on account of said Eleven Thousand (\$11,000) Dollars, then, and in that event, the said McLeod is hereby given a first lien upon any and all properties mentioned in said option for any

balance due of said Eleven Thousand (\$11,000) Dollars and interest if any, in the same manner and form as said lien is stated in said agreement of October 9th, 1914, and said Greenberg agrees to execute an instrument, proper in form, to be recorded, creating and reviving said lien, and in default thereof, at the option of said McLeod, said Greenberg agrees to pay to said McLeod any balance then due and owing to him on account of said Eleven Thousand (\$11,000) Dollars [41] and interest, if any.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument on this 17th day of April, 1917.

GEORGE K. McLEOD. (Seal)

HERBERT GREENBERG. (Seal)

County of New York,—ss.

On this 17th day of April, 1917, before me personally came George K. McLeod, to me known and known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

CHARLES B. WILLARD,

Notary Public, Residing in Kings Co., Kings Co., No.

126, Reg. No. 8114 Cert. Filed in N. Y. Co., 396

N. Y. County, Reg. No. 8281.

Commission expires March 30, 1918.

County of New York,—ss.

On this 17th day of April, 1917, before me personally came Herbert Greenberg, to be known and known to *be* to be the person described in and who executed the foregoing instrument, and he personally ac-

knowledged to me that he executed the same.

CHARLES B. WILLARD,
Notary Public, Residing in Kings Co., Kings Co., No.
126, Reg. No. 8114. Cert. Filed in N. Y. Co.,
No. 396, N. Y. County, Reg. No. 8281.

Commission expires March 30, 1918. [42]

EXHIBIT "B."

THIS *IDENTURE OF MORTGAGE* made and entered into this 17th day of April, 1917, between *ALASKA MINES CORPORATION*, a corporation organized and existing under and pursuant to the laws of the Commonwealth of Virginia, party of the first part (hereinafter referred to as the "Mortgagor") and Herbert Greenberg, of Nome, Alaska, party of the second part (hereinafter referred to as the "Mortgagee"), WITNESSETH:

The mortgagor, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations to it in hand paid by the Mortgagee, the receipt whereof is hereby acknowledged, and in order to secure the payment to the Mortgagee, of the sum of Forty thousand dollars (\$40,000) as evidenced by three promissory notes in writing, aggregating said sum, made and executed and delivered by the Mortgagor to the Mortgagee, all bearing even date herewith, copies of which are hereto annexed, marked "Schedule A," does hereby grant, bargain, sell and convey unto the Mortgagee, his heirs executors, administrators and assigns, all of the following described real and personal property situate in the Cape Nome Mining District, Seward Peninsula, Territory of Alaska;

An undivided fifty-one precent, interest in the Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River, together with a dredge hull and all timbers, stool, iron, bolts and appliances purchased for the same, situated on said The Holyoke No. 2 Claim on Holyoke Creek; or stored for said hull, and wherever situated.

TO HAVE AND TO HOLD the above granted premises unto [43] the Mortgagee, his heirs, executors, administrators and assigns forever. The above property being the same property conveyed and transferred by the Mortgagee to the Mortgagor by deed and bill of sale bearing even date herewith, this mortgage and the notes secured hereby being given to secure payment of a part or portion of the purchase money consideration paid for said property. Provided always that if the mortgagor or its successors and assigns shall pay unto the Mortgagee or his heirs, executors, administrators and assigns, the said sum of money mentioned in the aforesaid promissory notes and the interest thereon, at the time and in the manner mentioned in the said promissory notes, then and in that event these presents and the estate hereby granted shall cease, determine and become void.

And the parties hereto covenant and agree as follows:

FIRST. That the Mortgagor will pay the indebtedness as provided in this mortgage, and if default be made in the payment of any note, and such default shall continue for a period of sixty days after notice and demand in writing, then and in such event all of

said notes immediately and forthwith shall become due and payable, and it shall be lawful for the Mortgagee, his heirs, executors, administrators and assigns, to take immediate possession of all the personal property hereinbefore conveyed and transferred, and sell the same at public sale in the manner provided by law and apply the proceeds, as far as may be, to the payment of the amount then due, together with the costs and expenses of sale, including [44] all reasonable expenses of taking possession of, keeping and caring for said personal property. The United States Marshal of the Second District of the District of Alaska is hereby authorized to execute the power of sale herein granted to said Mortgage, his heirs, executors, administrators and assigns, or in case of such default and its continuance as aforesaid, the Mortgagee may proceed to foreclose this mortgage by suit at law in any court of competent jurisdiction. Notwithstanding this mortgage, the real and personal property hereinbefore mentioned *my* remain in possession of the Mortgagor until default and its continuance as aforesaid.

SECOND. That if default be made in the payment of any of said notes when due, and said default shall continue for a period of sixty days after notice and demand in writing, or if default shall be made in the payment of any interest, taxes, or assessments, and such default shall continue for a period of sixty days after like notice and demand, then and in such event all of said notes immediately and forthwith shall become due and payable and the Mortgagee shall have power to sell the realty herein described accord-

ing to law, and that upon such default, and its continuance as aforesaid, the Mortgagee shall have the right forthwith to enter upon the Mortgaged premises, receive all of the proceeds, rents, issues and profits therefrom and apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said proceeds, rents, issues and profits are, in the event of such default, and its continuance as aforesaid, hereby assigned to the Mortgagee.

THIRD. That the Mortgagee shall have the right upon any such default and the continuance of such default as [45] aforesaid, and upon the commencement of any proceedings *be* foreclose this mortgage, to apply for and shall be entitled, as a matter of right without consideration of the value of the mortgaged premises as security for amounts due the mortgagee or of the solvency of any person or persons liable for the payment of such amounts, to the appointment of a receiver of the rents, issues and profits or other proceeds from the real property above mortgaged.

FOURTH. That the Mortgagee may, at his option, pay any lawful tax, charge or assessment upon said property and said payment together with expenses incurred in connection therewith shall become part of the principal sum due from the Mortgagor to the Mortgagee;

FIFTH. That any notice required herein to be given by the Mortgagee to the Mortgagor may be either personally served or be served by mail through the United States postoffice by registered letter ad-

dressed to the Mortgagor at its principal place of business in the Territory of Alaska or its office in the Borough of Manhattan, City of New York, or it may be served upon the agent of the Mortgagor appointed in Alaska pursuant to statute.

SIXTH. That the Mortgagor shall pay over to the Mortgagee fifteen per cent, of all gold yielded or produced through any mining or dredging operations upon the property herein described, as said yield or production occurs, and that the Mortgagee shall apply said gold at its then value in gold coin of the United States of America as a payment or payments in reduction of the amounts then due to the Mortgagee from the Mortgagor by reason of the above mentioned promissory [46] notes, the said amounts being credited upon said promissory notes in the order of their maturity.

SEVENTH. That this mortgage is intended to cover not only the dredge herein described with all the appurtenances thereto, now located upon the real property hereinbefore described, but also any and all improvements and additions to said dredge and its appurtenances and to each and every and all of the parts thereof, and as said additions, changes, alterations and improvements are made they, by virtue of this mortgage shall become a part of said dredge and shall not be removable therefrom and shall become subject to this mortgage.

IN WITNESS WHEREOF, the ALASKA MINES CORPORATION has caused these presents to be executed in triplicate by its President and its corporate seal to be hereunto affixed, attested by its

Secretary, the day and year first above written.

ALASKA MINES CORPORATION,

By JAMES GAYLEY,

President.

[Corporate Seal]

Attest: WALTER S. REED,

Secretary.

United States of America,
Southern District of New York,
County of New York,—ss.

On this 17th day of April, 1917, before me, a Notary Public in and for the County of New York, personally appeared James Gayley and Walter S. Reed, each of whom is to me personally known, and known to me to be the persons who executed the foregoing instrument, the said James Gayley [47] as the said President of the Alaska Mines Corporation, and the said Walter S. Reed as the Secretary of the Alaska Mines Corporation, and they severally acknowledged to me that they executed the foregoing mortgage of both real and personal property in the name of, and as the act and deed of the Alaska Mines Corporation, and by its authority, and that they so executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Seal]

JOHN H. GEWOCKE,

Notary Public, Kings County No. 23. Certificate

Filed in New York Co. No. 44, Kings County
Register's No. 8024.

Commission expires Mch. 30, 1918.

United States of America,
Southern District of New York,
County of New York,—ss.

Walter S. Reed, being first duly sworn, on oath, deposes and says:

That he is Secretary of the Alaska Mines Corporation, which is a corporation and the Mortgagor named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

WALTER S. REED.

Subscribed and sworn to before me this 17th day of April, 1917. [48]

[Seal]

JOHN H. GEWECKE,

Notary Public, Kings County No. 23. Certificate
Filed in New York County No. 44, Kings
County Register's No. 8024. New York County
Register's No. 8054.

Commission expires Mch. 30, 1918.

United States of America,
Southern District of New York,
County of New York,—ss.

Herbert Greenberg, being first duly sworn on oath, deposes and says:

That he is the Mortgagee named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein and without any design to hinder, delay or defraud creditors.

HERBERT GREENBERG.

Subscribed and sworn to before me this 17th day of April, 1917.

[Seal] WM. E. CONLEY,
Notary Public in and for the County and State of
New York #155.

My commission expires March 30, 1919. [49]

Supreme Court of New York, County of New York.

GEORGE K. McLEOD,

Plaintiff,

vs.

HERBERT GREENBERG,

Defendant.

To the Above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated January 15th, 1918.

CLARENCE S. NETTLES,

Plaintiff's Attorney.

Office & P. O. Address, No. 1476 Broadway, Manhattan, New York City. [50]

Exhibit "D."

The People of the State of New York to the Sheriff of the County of New York, GREETING:

WHEREAS, an application has been made to the

Judge granting this warrant by George K. McLeod, plaintiff, for a warrant of attachment against the property of Herbert Greenberg, defendant, in an action in the Supreme Court of the State of New York in and for the County of New York, and it appearing by affidavit to the satisfaction of the Judge granting this warrant that one of the causes of action specified in Section 635 of the Code of Civil Procedure exists against the defendant to recover a sum of money only over and above all counterclaims known to the plaintiff, to wit, the sum of Four Thousand and Six Hundred Fifty-seven Dollars & 50/100 (\$4,657.50), with interest from the 15th day of November, 1917, for breach of an express contract in failing to pay over to the plaintiff monies received by the defendant and agreed by him to be paid over to the plaintiff, and the affidavit showing that the defendant is a natural person and not a resident of the state of New York, and the plaintiff having also given the undertaking required by law.

NOW, YOU ARE HEREBY COMMANDED to attach and safely keep so much of the property within your County which the defendant, Herbert Greenberg, has, or which he may have at any time before final judgment in the action, as will satisfy plaintiff's demand of Four Thousand Six Hundred Fifty-seven Dollars & 50/100 (\$4,657.50), with interest from November 15th, 1917, together with costs and expenses, and that you proceed hereon in the manner required of you by law. [51]

WITNESS, Hon. PETER A. HENDRICK, a Justice of the *Surprme* Court of the State of New

York, in and for the county of New York, at the county courthouse, City Hall Park, Borough of Manhattan, city of New York, on the 15th day of January, 1918.

PETER A. HENDRICK,

Judge of the Supreme Court of the State of New York.

CLARENCE S. NETTLES,

Plaintiff's Attorney, 1476 Broadway, Manhattan, New York City. [52]

Exhibit "E."

SHERIFF'S OFFICE, NEW YORK COUNTY.

I HEREBY CERTIFY the within to be a true copy of the original Warrant of Attachment, as issued to me in the within mentioned action, and that the attachment of which the within is a copy is now in my hands, and that by it I am commended to attach all estate, real and personal, including money and bank-notes, bonds, promissory notes and other instruments for the payment of money, as well as any and all interests in any partnership, of the defendant, and of the defendants, and each of *the*, as stated in said copy herewith served upon you, to which copy you are hereby referred for the name or names of the defendant or defendants whose property is attached within my county (except articles exempt from execution), and to take into my custody all books of account, vouchers, and paper relating to the property, debts, credits and effects, of said defendant, and of said defendants, and of each of them, together with all evidences of title to real estate, and that all such property, debts, credits and effects, and

all rights and shares of stock, with all interests and profits thereon, and all dividends thereon, or therefrom, of the said defendant and of said defendants and of each of them, now in your possession or under your control, are, and those which may come into your possession or under your control will be, liable to said warrant of attachment, and are hereby attached by me, and you are hereby required to deliver all such moneys, bank-notes, bonds, promissory [53] notes and other instruments for the payment of money, books, vouchers, papers, debts, credits, effects, evidences of title to real estate, shares of stock, interests, profits and dividends thereon, and all property capable of manual delivery, into my custody without delay. And I hereby require you to furnish me with a certificate as required in that behalf by the Code of Civil Procedure, of any rights, shares, debts, or other property of said defendant, and of said defendants, and each of *the*, incapable of manual delivery. And in DEFAULT hereof you will be liable to the EXAMINATION AND ATTACHMENT in such cases provided by law. Code of Civil Procedure, Secs. 650, 651.

TAKE NOTICE that, after service hereof upon you, no demand or property hereby attached can be lawfully released, by order or otherwise, except through the sheriff and by his direction. Code of Civil Procedure, Sec. 709, L. 1892, Ch. 418.

Dated, New York, the 15th day of January, 1918.

DAVID H. KNOTT,

Sheriff of the County of New York.

Louis Ressler,

Deputy Sheriff. [54]

Exhibit "F."

Supreme Court, New York County.

GEORGE K. McLEOD,

Plaintiff,

against

HERBERT GREENBERG,

Defendant.

I served a copy of the warrant of attachment, on Mr. Paul H. Hudson, Assistant Secretary of the Empire Trust Company, on January 15th, 1918, at 3:40 P. M., at 120 Broadway, and on Mr. Ellis E. Powell, General Manager of the Alaska Mines Corporation, on January 15th, 1918, at 3:50 P. M., at 71 Broadway, and on John J. Broderick, Jr., Treasurer of the Hudson Trust Company, on January 24th, 1918, at 10 A. M., at Broadway and 39th Street, New York City, and demanded a certificate.

LOUIS RESSLER,

Deputy Sheriff.

[Endorsed]: No. 2779. In the District Court for the District of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, Defendant. Answer. Answer Amended by Interlineation by the Clerk, Feb. 15, 1919. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 20, 1918. Thos. McGann, Clerk. By ———, Deputy. D. O. D. Cochran, Attorney for Defendant. [55]

JOURNAL OF THE DISTRICT COURT OF THE
TERRITORY OF ALASKA, SECOND DIVI-
SION.

Honorable WM. A. HOLZHEIMER, District Judge.

Saturday, February 15, 1919—11 A. M.

* * * * *

2779.

HERBERT GREENBERG

vs.

ALASKA MINES CORPORATION.

**Minutes of Court—February 15, 1919—Order Grant-
ing Leave to Amend Original Answer by Inter-
lineations by Clerk.**

Plaintiff represented by counsel, Hugh O'Neill.
Defendant represented by O. D. Cochran.

On motion of O. D. Cochran, it was ordered that leave be granted to amend the original answer by interlineation, by the Clerk as follows: On page #8 inserting the following words: "its check drawn on Empire Trust Company and payable to Empire Trust Company." Also, "that defendant had on deposit with said Empire Trust Company at the time of said tender, and subject to its check, a sum of money in excess of \$24,000.00"; on page #9 inserting the following words: "at said Empire Trust Company in the City of New York, State of New York," and striking out the words, "and will tender into this Court"; and inserting in their place the following words, "pay at said place"; further, on page #9 inserting the following words; "that for the purpose

of the payment of said promissory note, the defendant has ever since said January 15, 1918, and now has on deposit in said Empire Trust Company a sum of money in excess of the amount due on said note." Hugh O'Neill announced that defendant could not plead a tender without depositing the money into this court; also that plaintiff does not waive defendant's failure to deposit.

* * * * *

Whereupon Court adjourned until 2 P. M., Wednesday, February 19, 1919. [56]



*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

Amended Reply.

Comes now the plaintiff and for reply to the answer of defendant admits, denies and alleges as follows:

I.

Replying to paragraph XIV of defendant's answer, plaintiff admits that the defendant has and maintains its principal business office at 71 Broadway, New York, and that on the 11th day of January,

1918, one George K. McLeod served upon the defendant at its said office the notice therein set forth, and at the same time and place exhibited the instrument therein described.

II.

Replying to paragraph XV of said answer, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof.

III.

Replying to paragraphs XVI, XVII, XVIII, XX and XXI of defendant's answer, plaintiff admits each and every allegation therein contained.

IV.

Replying to paragraph XXII of defendant's answer, plaintiff admits that said Supreme Court for the county of New York, State of New York, is a court of general jurisdiction, and that the said action therein referred to is still pending in said court and undisposed of by said Court, but denies that said attachment and garnishment levied against the property of this plaintiff in said action is in full force and effect, and denies that the same, has not been released, modified, [57] vacated or set aside, but alleges that said attachment and garnishment in said paragraph referred to has been released and vacated by order of said court and is no longer in effect or force.

V.

Replying to paragraph XXIII of defendant's answer, plaintiff admits the same.

VI.

Replying to paragraph XXIV of the defendant's

answer, plaintiff denies that said George K. McLeod has any interest in the said note and mortgage sued upon in this action, and denies that the said George K. McLeod is a proper or necessary party to this action.

VII.

Replying to paragraphs XXV, XXVI and XXVII of defendant's answer, plaintiff denies each and every allegation, matter and thing therein contained, except that he admits and alleges that the Empire Trust Company of New York held said note on January 15, 1918, for collection as his agent, and on said date presented said note for payment to the defendant, and offered to cancel and surrender said note upon receipt of payment of its face value on said date, that at said time and place said defendant offered said Empire Trust Company the defendant's uncertified check for the amount mentioned in paragraph XXV of said answer of defendant, conditioned upon a demand for a written release of the mortgage sued upon herein to be executed by this plaintiff and one George K. McLeod, and said defendant refused to deliver said check or to pay said note under any other conditions, and plaintiff specifically denies that said defendant ever made any lawful tender to plaintiff of payment of said note at said time and place or elsewhere or at all.

And further replying to said paragraphs of said answer plaintiff alleges that he is now and always has been ready, willing and able to satisfy said mortgage as of record upon the payment of the amount due thereon. [58]

Further replying to said paragraphs plaintiff alleges that the defendant failed, refused and neglected, and still fails, refuses and neglects to deposit into this court the sum of Twenty-three Thousand Five Hundred and Twelve and 50/100 Dollars (\$23,512.50), as alleged in paragraph XXV of its answer, or any other sum, in payment of the note and mortgage sued upon herein. That said sum mentioned in said paragraph XXV is not now, or never has been, available to the plaintiff herein.

VIII.

Replying to paragraph XXVIII of the defendant's answer, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof.

WHEREFORE plaintiff having fully replied to the answer of the defendant prays for the relief demanded in his complaint.

HUGH O'NEILL,
Attorney for Plaintiff.

Territory of Alaska,
Second Division,—ss.

Hugh O'Neill, being first duly sworn, deposes and says: That I am the attorney for the plaintiff in the above-entitled action. That I have read the foregoing amended reply, know the contents thereof and that the same is true, as I verily believe. That the plaintiff herein is at present without the jurisdiction of the Territory of Alaska, to wit, in the State of New York, and that this verification is made by affiant for this reason.

HUGH O'NEILL.

Subscribed and sworn to before me this 15th day of February, 1919.

[Notarial Seal] L. E. WEITH,
Notary Public for the Territory of Alaska, Residing
at Nome.

My commission expires Nov. 14, 1921.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Amended Reply. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Feb. 15, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. Hugh O'Neill, Attorney for Plaintiff.
[59]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
Defendant.

Findings of Fact and Conclusions of Law.

This cause coming on regularly for trial before the Court on this, the 21st day of February, 1919, the plaintiff, Herbert Greenberg, appearing by his attorney, Hugh O'Neill, Esq., and the defendant, Alaska

Mines Corporation, a corporation, appearing by its attorney, O. D. Cochran, Esq., and the Court now having heard the testimony, both oral and documentary, offered on behalf of the plaintiff, and the defendant not having offered any testimony, and the Court now being fully advised in the premises, does make the following

FINDINGS OF FACT:

I.

The Court finds that the said defendant, Alaska Mines Corporation, is a corporation organized and existing under the laws of the State of Virginia, and is authorized to, and is, transacting business in the Territory of Alaska.

II.

The Court finds that heretofore, to wit, on the 17th day of April, 1917, for value received, the defendant corporation by James Gayley, its president, thereunto duly authorized, made, executed and delivered to Herbert Greenberg, plaintiff herein, its series of three certain promissory notes in words and figures following, to wit: [60]

SCHEDULE "A."

\$5,000.00.

New York, April 17, 1917.

On or before June 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of five thousand dollars (\$5,000.00) with interest at the rate of six per centum per annum, payment to be

made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000), all secured by a certain mortgage executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

SCHEDULE "A-2."

\$10,000.00

New York, April 17, 1917.

On or before November 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Ten Thousand Dollars (\$10,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000), all

secured by a certain mortgage executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

SCHEDULE "A.-#3."

\$25,000.00.

New York, April 17, 1917.

On or before January 15th, 1918, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Twenty-five Thousand Dollars (\$25,000), with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000), all secured by a certain mortgage executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note or any of them, is not paid on the day when due, and the default shall continue as

provided in said mortgage all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President. [61]

III.

The Court finds, that contemporaneously with the execution and delivery of said promissory notes the said defendant, to secure the payment thereof, made, executed and delivered to plaintiff a certain indenture of mortgage of real and personal property, situated in the Cape Nome Recording Precinct, Territory of Alaska, Second Division, a true copy of which said mortgage is annexed to plaintiff's complaint, and is as follows:

#65687.

THIS INDENTURE OF MORTGAGE made and entered into this 17th day of April, 1917, between Alaska Mines Corporation, a corporation organized and existing under and pursuant to the laws of the Commonwealth of Virginia, party of the first part (hereinafter referred to as the "Mortgagor") and HERBERT GREENBERG, of Nome, Alaska, party of the second part (hereinafter referred to as the "Mortgagee"), WITNESSETH:

The Mortgagor, for and in consideration of the sum of One Dollar (\$1.00) or other valuable considerations to it in hand paid by the Mortgagee, the receipt whereof is hereby acknowledged, and in order to secure the payment to the Mortgagee of the sum of Forty Thousand Dollars (\$40,000) as evidenced by three promissory notes in writing, aggregating

said sum, made, and executed and delivered by the Mortgagor to the Mortgagee, all bearing even date herewith, copies of which are hereto annexed, marked Schedule "A," does hereby grant, bargain, sell, and convey unto the mortgagee, his heirs, executors, administrators and assigns, all of the following described real and personal property situate in the Cape Nome Mining District, Seward Peninsula, Territory of Alaska;

An undivided fifty-one per cent interest in The Holyoke No. 2 Claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River, together with a dredge hull and all timbers, steel, iron, bolts and appliances purchased for the same, situated on said The Holyoke No. 2 Claim on Holyoke Creek, or stored for said hull, and wherever situated.

TO HAVE AND TO HOLD the above granted premises unto the Mortgagee, his heirs, executors, administrators and assigns forever. The above property being the same property conveyed and transferred by the Mortgagee to the Mortgagor by deed and bill of sale bearing even date herewith, this mortgage and the notes secured hereby being given to secure payment of a part or portion of the purchase money consideration paid for said property. Provided always that if the Mortgagor or its successors and assigns shall pay unto the Mortgagee or his heirs, executors, administrators and assigns, the said sums of money mentioned in the aforesaid promissory notes and the interest thereon, at the time and in the manner mentioned in the said promissory

notes, then and in that event these presents and the estate hereby granted shall cease, determine and become void.

And the parties hereto covenant and agree as follows:

FIRST. That the Mortgagor will pay the indebtedness as provided in this mortgage, and if default be made in the payment of any note, and such default shall continue for a period of sixty days after notice and demand in writing, then and in such event all of said notes immediately and forthwith shall become due and payable, and it shall be lawful for the Mortgagee, his heirs, executors and administrators and assigns, to take immediate possession of all the personal property hereinbefore conveyed and transferred, and sell the same at public sale in the manner provided by law and apply the proceeds as far as may be, to the payment of the amount then due, together with [62] the costs and expenses of sale, including all reasonable expense of taking possession of, keeping and caring for said personal property. The United States Marshall of the Second District of the District of Alaska is hereby authorized to execute the power of sale herein granted to said Mortgagee, his heirs, executors, administrators and assigns, or in case of such default and its continuance as aforesaid, the Mortgagee may proceed to foreclose this mortgage by suit at law in any court of competent jurisdiction. Notwithstanding this mortgage, the real and personal^{al}ky property hereinbefore mentioned may remain in possession of the

Mortgagor until default and its continuance, as aforesaid.

SECOND. That if default be made in the payment of any of said notes when due, and said default shall continue for a period of sixty days after notice and demand in writing, or if default shall be made in the payment of any interest, taxes, or assessments and such default shall continue for a period of sixty days after like notice and demand, then and in such event all of said notes immediately and forthwith shall become due and payable and the Mortgagee shall have power to sell the realty herein described according to law, and that upon such default, and its continuance as foreshaid, the Mortgagee shall have the right forthwith to enter upon the mortgaged premises, receive all of the proceeds, rents, issues and profits therefrom and apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said proceeds, rents issues, and profits are, in the event of such default, and its continuance, as aforesaid, hereby assigned to the Mortgagee.

THIRD. That the Mortgagee shall have the right upon any such default and the continuance of such default as aforesaid, and upon the commencement of any proceedings to foreclose this mortgage, to apply for and shall be entitled, as a matter of right without consideration of the value of the mortgaged premises as security for amounts due the Mortgagee or of the solvency of any person or persons liable for the payment of such amounts to the appointment of a Receiver of the rents, issues and profits or other pro-

ceeds from the real property above mortgaged.

FOURTH. That the Mortgagee may at his option, pay any lawful tax, charge, or assessment upon said property and said payment together with expenses incurred in connection therewith shall become *part of* the principal sum due from the Mortgagor to the Mortgagee.

FIFTH. That any notice required herein to be given by the Mortgagee to the Mortgagor may be either personally served or be served by mail through the United States Postoffice by registered letter addressed to the Mortgagor at its principal place of business in the Territory of Alaska, or its office in the Borough of Manhattan, City of New York, or it may be served upon the agent of the Mortgagor appointed in Alaska pursuant to statute.

SIXTH. That the Mortgagor shall pay over to the Mortgagee fifteen per cent of all gold yielded or produced through any mining or dredging operations upon the property herein described, as said yield or production occurs, and that the Mortgagee shall apply said gold at its then value in gold coin of the United States of America, as a payment or payments in reduction of the amounts then due to the Mortgagee from the Mortgagor by reason of the above mentioned promissory notes, the said amounts being credited upon said promissory notes in the order of their maturity.

SEVENTH. That this mortgage is intended to cover not only the dredge herein described with all the appurtenances thereto, now located upon the real property hereinbefore described, but also any and all

improvements and additions to said dredge and its appurtenances and to each and every and all of the parts thereof, and as said additions, changes, alterations, and improvements are made they, by virtue of this mortgage, shall become a part of said dredge and shall not be removable therefrom and shall become subject to this mortgage.

IN WITNESS WHEREOF, The ALASKA MINES CORPORATION has caused these presents to be executed in triplicate by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

ALASKA MINES CORPORATION,
 [Corporation Seal] By JAMES GAYLEY,
 President.

Attest: WALTER S. REED. [63]

United States of America,
 Southern District of New York,
 County of New York,—ss.

On this 17th day of April, 1917, before me, a Notary Public in and for the County of New York, personally appeared James Gayley and Walter S. Reed, each of whom is to me personally known, and known to me to be the persons who executed the foregoing instrument, the said James Gayley as the President of the Alaska Mines Corporation, and the said Walter S. Reed as the Secretary of the Alaska Mines Corporation, and they severally acknowledged to me that they executed the foregoing mortgage of both real and personal property in the name of, and as the act and deed of the Alaska Mines Corporation,

and by its *authority* and that they so executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Notarial Seal] JOHN H. GEWECKE,
Notary Public, King County, No. 23, Certificate Filed
in New York County.

Commission expires Mar. 30, 1918.

State of New York,
County of New York,—ss.

No. 42,780, Series B.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that John H. Gewecke whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and therein written, was, at the time of taking such deposition or proof and acknowledgment, a Notary Public acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions, and also acknowledgments and proof of Deeds, or conveyances for land, tenements, or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such *Notary* Public and verily believe

that the signature to said deposition, or certificate of proof or acknowledgmen is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County this 17th day of April, 1917.

[Notorial Seal]

WILLIAM F. SCHNEIDER,
Clerk.

United States of America,
Southern District of New York,
County of New York,—ss.

Walter S. Reed, being first duly sworn, on oath, deposes and says: That he is Secretary of the Alaska Mines Corporation, which is a corporation and the Mortgagor named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

WALTER S. REED.

Subscribed and sworn to before me this 17th day of April, 1917.

[Notorial Seal]

JOHN H. GEWECKE,
Notary Public, Kings County, No. 23, Certificate
Filed in New York County, No. 44, Kings
County Regesters' No. 8024, New York County,
Register's No. 8054.
Commission expires Mch. 30, 1918.

State of New York,
County of New York,—ss.

I, William F. Schneider, Clerk of the Court of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that John H. Gewecke, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such deposition or proof and acknowledgment, a Notary Public, acting in and for the said County, duly commissioned and sworn, [64] and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for, land, tenements, or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition, or certificate or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County this 17 day of April, 1917.

[Notorial Seal]

WM. F. SCHNEIDER,
Clerk.

United States of America,
Southern District of New York,
County of New York,—ss.

Herbert Greenberg, being first duly sworn on oath, deposes and says: That he is the Mortgagee named in the foregoing mortgage; that the same is made in good faith to secure the amount named therein and without any design to hinder, delay or defraud creditors.

HERBERT GREENBERG.

Subscribed and sworn to before me this 17th day of April, 1917.

[Notorial Seal]

WM. E. CONLEY,

Notary Public in and for the County and State of
New York. #155.

My commission expires March 30, 1919.

State of New York,
County of New York,—ss.

No. 42,826, Series B.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, that Wm. E. Conley, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such depositions, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws

of said State, to take depositions and to administer oaths to be used in any Court of said State, and for general purposes; and also to take acknowledgments and proof of deeds, of conveyances for land, tenements or hereditaments in said State of New York, and further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 17th day of April, 1917.

[County Seal] WM. F. SCHNEIDER,
Clerk.

SCHEDULE "A."

\$5,000.00 New York, April 17, 1917.

On or before June 15, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Five thousand dollars (\$5,000.00) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty-thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipu-

lated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President. [65]

SCHEDULE "A-2."

\$10,000.00.

On or before November 15th, 1917, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Ten Thousand Dollars (\$10,000,) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue, as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION,

By JAMES GAYLEY,

President.

SCHEDULE "A-#3."

\$25,000.00.

On or before January 15th, 1918, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Twenty-five thousand dollars (\$25,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of forty thousand dollars (\$40,000) all secured by a certain mortgage, executed by the undersigned, *od* even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue, as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION,

By JAMES GAYLEY,

President.

Recorded June 11, 1917, 9:40 A. M., at request of
W. A. Gilmore.

JAMES FRAWLEY,

Recorder.

IV.

The Court finds that at the time of the execution of said mortgage the said defendant was, and still is. the

owner of the real and personal property described in said mortgage and thereby mortgaged to plaintiff.

V.

The Court finds that said mortgage was duly executed by the said defendant in the presence of one witness, who signed the same as a witness thereto, and was duly acknowledged by the said defendant, [66] Alaska Mines Corporation, a corporation, by its said president, James Gayley, who was thereunto duly authorized, before a notary public, so as to entitle it to be recorded, and at the time of the execution of said mortgage there was attached thereto the affidavits of Walter S. Reed, the secretary of said corporation mortgagor, who was thereunto duly authorized, and Herbert Greenberg, the mortgagee therein named, which said affidavits were to the effect that said mortgage was made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

VI.

The Court finds that said mortgage was thereafter on the 11th day of June, 1917, filed for record and recorded in the office of the recorder of deeds and mortgages of Cape Nome Precinct, Territory of Alaska, Second Division, in Volume 193, page 154, and was also on the 10th day of August, 1917, filed in said office as a chattel mortgage, and ever since has been, and now is, on file therein.

VII.

The Court finds, that the said defendant, Alaska Mines Corporation, has not paid said promissory notes in said mortgage set out and designated

Schedule "A," Schedule "A-2" and Schedule "A-3," except the promissory notes marked Schedule "A" and Schedule "A-2"; and that no part of said promissory note designated and marked Schedule "A-3," or any interest due thereon, has been paid, save and except the sum of Twenty-five Hundred Dollars (\$2500.00), which said sum was paid on April 17th, 1917, and the same is now, and for a long time has been, due and payable from the defendant to the plaintiff.

VIII.

The Court finds that notice and demand in writing were duly served on said defendant corporation by plaintiff, as provided in said mortgage, after said promissory note marked Schedule "A-3" became due, and a period of more than sixty days has elapsed since said notice and demand in writing were so served, as aforesaid, and said defendant has been, and still is, in default, of the payment thereof, and no part of said promissory note designated Schedule "A-3," or any part of the interest accrued thereon has been paid, save and except the said sum of Twenty-five Hundred Dollars (\$2500.00) paid on April [67] 17th, 1917, and the balance thereof, together with accrued interest, is now due, owing and unpaid from the defendant to the plaintiff.

IX.

The Court finds that the personal property mentioned and described in said mortgage is now in the possession of said defendant, its agents and bailees, in the Precinct, Territory and Division aforesaid.

X.

The Court finds that the plaintiff is the lawful owner and holder of said mortgage and said promissory note designated Schedule "A-3."

XI.

The Court finds that no proceedings have been had at law or otherwise, for the recovery of said sum and interest due on said promissory note marked Schedule "A-3" or any part thereof.

XII.

The Court finds there is due, owing and unpaid from defendant to plaintiff, in principal and interest, on said promissory note designated as Schedule "A-3" the sum of Twenty-four Thousand Nine Hundred and Ninety Dollars (\$24,990.00).

XIII.

The Court finds that the sum of Twenty-four Hundred and Ninety-nine Dollars (\$2499.00) is a reasonable sum to be allowed for attorney's fees for the commencement and prosecution of this action to foreclose said mortgage.

XIV.

The Court finds that the defendant has and maintains its principal business office at 71 Broadway New York, and that on the 11th day of January, 1918, one George K. McLeod served upon the defendant at its said office, the notice in paragraph XIV of defendant's answer set forth, and at the same time and place exhibited the instrument annexed to said answer and marked Exhibit "A" attached to Exhibit "C." [68]

XV.

The Court finds that the allegations contained in

paragraphs XVI, XVII, XVIII, XX and XXI of defendant's answer are true.

XVI.

The Court finds that the Supreme Court for the County of New York, State of New York, is a court of general jurisdiction. The Court finds that the attachment and garnishment issued out of said court and levied against the property of Herbert Greenberg has been released, vacated and set aside by order of said court on the 27th day of September, 1918, and is no longer of any force or effect.

XVII.

The Court finds that the allegations contained in paragraph XXIII of defendant's answer are true.

XVIII.

The Court finds that George K. McLeod has no interest in the note and mortgage sued upon in this action; and that the said George M. McLeod is not a proper or necessary party to this action.

XIX.

The Court finds that the Empire Trust Company of New York, held said note on January 15th, 1918, for collection, as the agent of plaintiff herein, and on said date presented said note for payment to the defendant, and offered to cancel and surrender said note upon the receipt of payment of its face value on said date. That at said time and place said defendant offered said Empire Trust Company the defendant's uncertified check for the sum of Twenty-three Thousand Five Hundred and Twelve and 50/100 Dollars (\$23,512.50) conditioned upon a demand for a written release of the mortgage sued upon herein, to be

executed by this plaintiff and one George K. McLeod, and said defendant refused to deliver said check, or to pay said note, under any other conditions.

XX.

The Court finds that the defendant never made any lawful tender to plaintiff of payment of said note on the 15th day of January, 1918, or at any time, or at all. [69]

XXI.

The Court finds that plaintiff at all times has been ready, willing and able to satisfy said mortgage as of record, upon the payment of the amount due thereon.

XXII.

The Court finds that the defendant failed, refused and neglected, and still fails, refuses and neglects to deposit into this court the sum of Twenty-three Thousand Five Hundred and Twelve and 50/100 Dollars (\$23,512.50) alleged in paragraph XXV of its answer, or any other sum, in payment of the note and mortgage sued upon herein, and that the said sum is now unpaid, and never has been available to the plaintiff herein.

XXIII.

The Court finds that each and all of the allegations and averments in the first cause of action in plaintiff's complaint contained are true and correct.

CONCLUSIONS OF LAW.

As Conclusions of Law from the foregoing Findings of Fact, the Court finds:

I.

That the plaintiff, Herbert Greenberg, is entitled to a judgment and decree against the defendant, Alaska

Mines Corporation, a corporation, for the sum of Twenty-four Thousand Nine Hundred and Ninety Dollars (\$24,990.00) with interest at the rate of eight per cent, per annum from February 21st, 1919, being the date of the entry of decree herein, together with the sum of Twenty-four Hundred and Ninety-nine Dollars (\$2,499.00) as attorney's fees in this action, and costs of suit taxed at the sum of \$——.

II.

That the said judgment in favor of plaintiff, Herbert Greenberg, be adjudged a prior lien by virtue of the said mortgage upon all the real and personal property described therein, and that said mortgage therein mentioned be foreclosed in the manner provided [70] by law, and the real and personal property therein described sold in the manner provided by law, and the proceeds thereof applied to the payment of the amount found due to the plaintiff on the said promissory note designated as Schedule "A-3," together with interest, attorney's fees and costs, and that any surplus be delivered to the said defendant.

III.

That by virtue of the agreement between plaintiff herein and one George K. McLeod, described in paragraph XIV of defendant's answer and annexed thereto and marked Exhibit "A" attached to Exhibit "C," plaintiff became a trustee of an express trust, and may sue without joining with him the person for whose benefit the action is prosecuted.

IV.

That no lawful tender of the amount due upon said note and mortgage sued upon herein has ever been

made by defendant to plaintiff.

Done in open court this 10th day of March, 1919.

WM. A. HOLZHEIMER,
District Judge.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Findings of Facts and Conclusions of Law. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division at Nome. Feb. 27, 1919. Thos. McGann, Clerk. By —, Deputy. M. Hugh O'Neill, Attorney for Plaintiff. Orders & Judgments, Vol. 11, Page 525. C. [71]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

Judgment.

This cause coming on regularly for trial before the Court on the 21st day of February, 1919, the plaintiff, Herbert Greenberg, appearing by his attorney, Hugh O'Neill, Esq., and the defendant, Alaska

Mines Corporation, a corporation, appearing by its attorney, O. D. Cochran, Esq., and the Court having heard the testimony on behalf of the plaintiff, which said testimony was both oral and documentary, and the defendant having offered no testimony, and the Court from such testimony introduced on behalf of plaintiff having made and filed its Findings of Fact and Conclusions of Law—

NOW, THEREFORE, on motion of Hugh O'Neill, Esq., counsel for plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Herbert Greenberg, do have and recover of and from the defendant, Alaska Mines Corporation, a corporation, the sum of Twenty-four Thousand Nine Hundred and Ninety Dollars (\$24,990.00), with interest at the rate of eight per cent per annum from the 21st day of February, 1919, together with the sum of Twenty-four Hundred and Ninety-nine Dollars (\$2499.00) attorney's fees in this suit, and the costs of suit taxed at \$——. That the amount of the judgment aforesaid in favor of said plaintiff, and against said defendant, is a valid, prior lien by virtue of the mortgage described in plaintiff's complaint, upon all the real and personal property therein set forth, and hereinafter particularly described. [72]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said real and personal property described in said mortgage, and in the findings of the Court herein, be sold in the manner provided by law by the United States Marshal of the Second Division of Alaska, according to the course and prac-

tice of this court, and that the said United States Marshall sell first, the personal property mentioned and described in said mortgage and findings of fact, and which consists of a dredge hull and all timbers, steel, iron bolts and appliances purchased for the same, situated on Holyoke No. 2 claim, on Holyoke Creek, or stored for said hull, and wherever situated. And the proceeds of said sale by said Marshal, after deducting the costs and expenses of sale, be applied to the satisfaction of the judgment of the plaintiff hereinbefore set forth, and that if sufficient be not realized from the sale of said personal property to satisfy and discharge the amount due plaintiff, the hereinafter described real property mentioned and set forth in the complaint in this action be sold by the said Marshal in the manner prescribed by law, and according to the course and practice of this court, and the proceeds of such sale be applied by the said Marshal, first, to the costs and expenses of sale, and the balance, if any, upon the judgment of the plaintiff herein, in satisfaction and discharge thereof, and the overplus, then remaining, if any there be, be paid by the Marshal over to the said defendant, Alaska Mines Corporation, a corporation. That a description of the real property so ordered to be sold is as follows: An undivided fifty-one per cent interest in the Holyoke No. 2 claim on Holyoke Creek, a tributary of Bourbon Creek, a tributary of Dry Creek, a tributary of Snake River.

That the defendant, the Alaska Mines Corporation, a corporation, and all persons claiming or to claim from or under it, and all persons having liens

subsequent to the said mortgage upon the lands and premises described in said mortgage, and his personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, [73] and all persons claiming to have acquired any estate or interest in said premises subsequent to said mortgage, be forever barred and foreclosed of and from all equity of redemption and claim of in and to the said mortgaged premises, and every part and parcel thereof, from and after the delivery of the Marshal's deed therefor.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers of said real property at said sale be let into possession thereof, and that any parties to this action who may be in possession thereof, and any person who since the commencement of this action has come into possession under either of them, deliver their possession thereof to such purchaser or purchasers on production of the Marshal's certificate of sale for such premises, or any part thereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the moneys arising from the said sale of real and personal property shall be insufficient to pay the amount found due the plaintiff, as above stated, with interest and costs and expenses, as aforesaid, the United States Marshal to specify the amount of such deficiency and balance due to the plaintiff in his return for sale, and that the Defendant, Alaska Mines Corporation, a corporation, pay unto the said plaintiff the amount of such

deficiency, with interest thereon at the rate of eight per cent per annum from the date of said last-mentioned return; and that plaintiff have execution therefor.

Done in open court this 15th day of March, 1919.

WM. A. HOLZHEIMER,
District Judge.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Proposed Judgment. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Feb. 27, 1919. Thos. McGann, Clerk. By —, Deputy. M. Final Judgment. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Mar. 15, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. [74] Hugh O'Neill, Attorney for Plaintiff. Orders & Judgments, Vol. 11, Page 531-C. [75]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that on the 1st day of February, 1919, the defendant's motion to make one George K. McLeod a party to this action came on for hearing before the Hon. William A. Holzheimer, Judge of the District Court for the Territory of Alaska, Second Division; the plaintiff appearing by his attorney, Hugh O'Neill, and the defendant appearing by its attorney, O. D. Cochran, and the following proceedings were had and taken:

The Court thereupon heard and considered the issue joined by the following motion, and answer to motion, heretofore filed by the defendant and by the plaintiff respectively:

*“In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

**Motion for Order Directing that George K. McLeod
be Made Party Plaintiff to Action.**

Comes now the defendant and moves the Court to make an order herein requiring and directing that one George K. McLeod be brought in and made a party plaintiff or defendant in the above-entitled

action; and that process necessary to making said George K. McLeod a party be regularly issued out of said court and cause, for the reason that it is shown by the pleadings herein that the said George K. McLeod has and claims an undivided [76] 11/40 interest in the promissory note and mortgage which are the subject matter of said action, and that said George K. McLeod is a real party in interest in said action and is a necessary party to a complete determination thereof.

This motion is made and based upon the pleadings, records and files in the above-entitled court and cause.

O. D. COCHRAN,
Attorney for Defendant.

(Endorsed on Back): No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Motion. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome, Jan. 31, 1919. Thos. McGann, Clerk, by D. Deputy. O. D. Cochran, Attorney for Defendant, Nome, Alaska.

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

**Answer to Motion for Order Directing that George
K. McLeod be Made Party Plaintiff to Action.**

Comes now the plaintiff in the above-entitled cause, and for answer to motion requiring and directing that one George K. McLeod be brought in and made a party plaintiff or defendant in the above-entitled cause, alleges as follows:

I.

That said George K. McLeod has no interest whatsoever in the promissory note and mortgage which are the subject matter of said action. [77]

II.

That said George K. McLeod is a resident of the State of New York, and is at the present time living outside of the Territory of Alaska.

III.

That Herbert Greenberg is the trustee of an express trust.

IV.

That George K. McLeod is not a necessary or

proper party to a complete determination of this action.

This answer to motion is based upon two agreements attached hereto and made a part hereof, and marked for identification Exhibits "A" and "B," respectively, upon the testimony to be introduced at the hearing hereof, and upon all the records, papers and files in the above-entitled action.

HUGH O'NEILL,
Of Counsel for Plaintiff.

RECITAL.—Exhibit "A" attached to the foregoing answer to motion is an exact copy of the contract received in evidence upon the hearing of said motion and marked Plaintiff's Exhibit "B," and Exhibit "B" attached to said foregoing answer to motion is an exact copy of the contract received in evidence upon the hearing of said motion and marked Plaintiff's Exhibit "A." [78]

(Endorsed on back): "In the District Court for the Territory of Alaska, Second Division, No. 2779. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Answer to Motion. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Feb. 11, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. Hugh O'Neill, of Counsel for Plaintiff."

In support of the answer to the motion plaintiff offered Exhibit "A," which was received in evidence, without objection, of which the following is a copy:

Plaintiff's Exhibit "A."

#65728.

AGREEMENT made this 17th day of April, in the year one thousand nine hundred and seventeen, between HERBERT GREENBERG, of Nome, Alaska (hereinafter referred to as "Greenberg"), party of the first part, and ALASKA MINES CORPORATION, a corporation organized and existing under and pursuant to the laws of the Commonwealth of Virginia (hereinafter referred to as the "Corporation"), party of the second part.

WITNESSETH: WHEREAS, Greenberg is desirous of granting [79] to the Corporation and the Corporation is desirous of obtaining from Greenberg, an option to purchase certain mining claims situated in the Cape Nome Mining and Recording District, District of Alaska, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and one dollar (\$1.00) by each party to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree with each other as follows:

FIRST. Greenberg agrees to grant, and hereby does grant, to the Corporation, an option or right to purchase from Greenberg, upon the terms and conditions hereinafter set forth, certain mining claims situated in the Cape Nome Mining and Recording District, District of Alaska, known and more particularly described as follows:

Un undivided one-half interest in the Bessie Claim, being first Bench off Holyoke Creek No. 4 Left Limit; also No. 3 Claim Holyoke Creek, a tributary of Bourbon Creek, a tributary of Snake River; also Legal Tender Bench Claim off No. 3 Holyoke Left Limit, Roxie Fraction Claim situate on the North side of the Bessie Claim; Solomon Fraction Claim joining the north end of No. 4 Holyoke Creek, it being understood that Greenberg is the owner of an option for the purchase of one-half interest in the Roxie Fraction Claim situate on the north side of the Bessie Claim and is the owner of the remaining one-half interest in said claim, and is the owner of an option for the purchase of Solomon Fraction Claim joining the north end of No. 4 Holyoke Creek, hereinabove described, and that Greenberg agrees to exercise said options and to acquire title to said claims prior to the date of the first payment to be made by the Corporation to Greenberg, as hereinafter provided. The option hereby granted shall expire on the first day of June, 1918, and the election of the Corporation to exercise the same shall be evidenced by the Corporation making payment to Greenberg in full of the first installment, to wit, the sum of twenty-five thousand dollars [80] (\$25,000) on or before June 1st, 1918, on account of the total purchase price of one hundred and twenty-five thousand dollars (\$125,000) to be paid hereunder.

SECOND. In the event the Corporation pays to Greenberg the sum of twenty-five thousand dollars (\$25,000) as aforesaid, on or before June 1st, 1918, it hereby agrees to make payment of the further sum

of one hundred thousand dollars (\$100,000), as follows:

Twenty-five thousand dollars (\$25,000) on or before January 15th, 1919;

Twenty-five thousand dollars (\$25,000) on or before June 1st, 1919;

Twenty-five thousand dollars (\$25,000) on or before January 15th, 1920; and

Twenty-five thousand dollars (\$25,000) on or before December 31st, 1920, said payments to be made to Greenberg by depositing same to his credit at the Empire Trust Company, 120 Broadway, New York City.

THIRD. Simultaneously with the execution and delivery hereof, Greenberg agrees to execute and acknowledge a good and sufficient deed of conveyance covering all of the property hereinabove described, conveying the same to the Corporation, its successors and *and* assigns, with covenants, warranting to defend the title of Greenberg thereto, and further agrees on the execution of these presents, to place said deed in escrow with said Empire Trust Company, and to give instructions to said Empire Trust Company to deliver the same to, or upon the order of, the Corporation, its successors and assigns, upon the payment to Greenberg, as herein set forth, of the sum of one hundred and twenty-five thousand dollars (\$125,000). When the payments made to Greenberg through said Trust Company and/or the receipts signed by him, deposited with said Trust Company aggregate the sum of one hundred and twenty-five thousand dollars (\$125,000), the same shall be

sufficient evidence of the payment of said sum to Greenberg, and to [81] warrant the delivery by the Trust Company to the Corporation of the deed herein referred to, and the Trust Company shall be fully protected in relying thereon.

FOURTH. Greenberg hereby agrees that the Corporation, its successors and assigns, may forthwith upon the execution of these presents, enter upon the premises hereinabove described and prospect the same; granting unto said Corporation the right to dredge said property and extract minerals therefrom.

FIFTH. The Corporation agrees that in the event that the Corporation shall prospect said property and dredge the same and extract minerals therefrom, said Corporation will pay to Greenberg a sum or sums of money equivalent to fifteen per cent of the gross output of said property, as cleanups are made, by depositing said sum or sums from time to time with said Empire Trust Company, to the credit of Greenberg, and the Corporation further agrees that it will render sworn statements to Greenberg showing the gross output of said property as said cleanups are made, and will permit Greenberg to be present and to inspect said cleanups when and as the same are made.

SIXTH. Greenberg hereby agrees that all sums paid to him by the Corporation, in pursuance of the provisions of paragraph "Fifth" of this agreement, shall be applied by Greenberg to the payments to be made by the Corporation to Greenberg in accordance with the terms of this agreement as provided in paragraph "Second" hereof, and shall be duly credited

by Greenberg as payments on account thereof, it being understood and agreed that in no event shall the Corporation be obligated to make payments to Greenberg in excess of the sum of one hundred and twenty-five thousand dollars (\$125,000).

SEVENTH. Greenberg covenants that, with the exception of the property which he holds under the option as hereinabove described, he is seized of the premises above described and of each and every parcel thereof, in fee simple, and has a good right to convey and [82] transfer the same, and that said premises are free from encumbrances and further agrees that in the event of any litigation arising regarding the title of the aforesaid claims, or any of them, during the terms of this agreement, said Greenberg shall defend said litigation at his own expense, it being further understood and agreed that during the pendency of any such litigation the obligation of the Corporation to make payments in accordance with the terms of this agreement shall be suspended, and that in the event that said litigation shall terminate adversely to the title of Greenberg, the obligation of the Corporation to make payments in accordance with the terms of this agreement shall cease and determine, and all sums paid by the Corporation hereunder shall be forthwith repaid to the Corporation. Anything in this paragraph to the contrary notwithstanding, however, it is understood and agreed that if any litigation shall arise regarding the title to the claims hereinabove described and known as Legal Tender Bench Claim off No. 3 Holyoke, Roxie Fraction Claim situate on the North end of

Bessie Claim and Solomon Fraction Claim joining the North end of No. 4 Holyoke Creek, or any of them, during the term of this agreement, the obligation of the Corporation to make payments in accordance with this agreement shall not be suspended, provided that Greenberg shall give to the Corporation a bond with Greenberg as principal and a surety company as surety thereon, which surety company shall be authorized to execute said bond of indemnity and the bonds of which are acceptable to the Courts of the District of Alaska or the State of New York, or with an individual satisfactory to the Corporation as surety thereon, which bonds shall provide for the payment to the Corporation of the following sum or sums in the event that the litigation in respect of said title or titles shall result adversely to the title of Greenberg, namely:

Legal Tender Bench Claim off No. 3 Holyoke, Eight Thousand Dollars (\$8,000).

Roxie Fraction Claim situate on the North end of Bessie Claim, [83] Four thousand five hundred dollars (\$4,500); and

Solomon Fraction Claim joining the North end of No. 4 Holyoke Creek, four thousand five hundred dollars (\$4,500).

It is further understood and agreed that in the event that the litigation in respect of said title or titles shall result adversely to the title of Greenberg, and the Corporation shall recover the amount or amounts hereinabove set forth in respect of any claim or claims, the same shall be deemed to be full indemnity to the Corporation for the failure of Greenberg

to convey good title to said claim or claims, and the Corporation shall make no further claim hereunder by reason of the failure of Greenberg to convey good title to said claim or claims.

EIGHTH. In the event that the Corporation shall fail to make payments in accordance herewith, on or before the dates upon which the same become due, as hereinbefore specified, and such default shall continue for a period of sixty days, then, and in that event upon the expiration of such sixty day period, this agreement shall become null and void and all moneys previously paid shall become forfeited to Greenberg as and for liquidated damages, without any further obligation or liability whatsoever on the part of the Corporation to make any other or further payment hereunder or on account thereof;

Anything in this paragraph to the contrary notwithstanding, it is understood and agreed that the Corporation shall exercise its option hereunder by the payment to Greenberg of the sum of twenty-five thousand dollars (\$25,000), on or before the first day of June, 1918, and in the event of its failure to do so, all rights of the Corporation hereunder shall cease and determine.

NINTH. It is understood and agreed that Greenberg reserves the right until June 1st, 1918, to mine, by any other method except dredging the Bessie claim and #4 Holyoke claim and shall also have the right to sluice and cleanup any dumps or tailings for a period [84] of ninety days after mining operations have ceased, and said Greenberg covenants and agrees to pay as royalty to the Corporation a sum or

sums of money equivalent to twenty per cent of the gross amount received out of his undivided one-half interest in the Bessie Bench claim only by or through said mining operations, said payments to be made as cleanups are made, and it is further agreed that any and all such payments shall be applied and credited by Greenberg as payments made by the Corporation to Greenberg in reduction of any payment or payments still due under the terms of this agreement in the order of said payments, as provided in this agreement, and signed receipts therefor shall be delivered to the Corporation or deposited by Greenberg with the Empire Trust Company as evidence of such payments. Greenberg further agrees that he will render sworn statements to the Corporation showing the gross amount received by Greenberg out of his undivided one-half interest in the Bessie Bench claim, by or through said mining operations, and further agrees that the Corporation through its then General Manager in Alaska may be present and inspect all cleanups when and as made.

TENTH. It is understood and agreed that all extensions of time granted to the Corporation to exercise its option hereunder shall be in writing and any extension of time granted to the Corporation shall automatically extend the right of Greenberg, for an equivalent period, to mine and clean up, as in paragraph "Ninth" of this agreement provided.

ELEVENTH. This agreement shall bind the heirs, executors, administrators and assigns of Herbert Greenberg and the successors administrators and assigns of the Alaska Mines Corporation.

IN WITNESS WHEREOF the party of the first part has hereunto set his hand and seal, and the party of the second part has caused these presents to be executed by its President and its corporate seal to be hereunto affixed, attested by its Secretary, [85] the day and year first above written.

HERBERT GREENBERG. (Seal)
ALASKA MINES CORPORATION.

By JAMES GAYLEY,
President.

In the presence of:

T. H. MARSHALL.

[Corporation Seal] Attest: WALTER S. REED,
Secretary.

United States of America,
Southern District of New York,
County of New York,—ss.

On this 17th day of April, 1917, before me, a notary public in and for the county of New York, personally appeared James Gayley and Walter S. Reed, each of whom is to me personally known, and known to me to be the persons who executed the foregoing instrument, the said James Gayley as the said President of the Alaska Mines Corporation, and the said Walter S. Reed as the Secretary of the Alaska Mines Corporation, and they severally acknowledged to me that they executed the foregoing agreement in the name of, and as the act and deed of the Alaska Mines Corporation, and by its authority, and that they so executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Notarial Seal] JOHN H. GEWECKE,
Notary Public King County, No. 23, Certificate
filed in New York County, No. 44. Kings
County Register's No. 8024, New York County
Register's No. 8054.

Commission expires March 30, 1918.

State of New York,
County of New York,—ss.

No. 39,838, Series B.

I, William F. Schneider, Clerk of the County of New York [86] and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That John H. Gewecke whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition or proof and acknowledgment, a notary public, acting in and for the said County duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public, and verily be-

lieve that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court and county this 20th day of Apr., 1917.

[County Seal]

W. F. SCHNEIDER,

Clerk.

State of New York,

County of New York,—ss.

This is to certify that on this 17th day of April, A. D. 1917, before me, William E. Conley, a Notary Public in and for the State of New York, duly commissioned and sworn, personally came Herbert Greenberg, to me known to be the individual described in and who executed the within instrument, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal, the day and year in this certificate first above written.

[Notarial Seal]

W. E. CONLEY, [87]

Notary Public in and for the State of New York, Residing at 3120 Broadway, Borough of Manhattan, County of New York, Notary Public, N. Y. Co. No. 155, N. Y. Co. Register's Office No. 9155.

My commission expires March 30, 1919.

State of New York,

County of New York,—ss.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record,

DO HEREBY CERTIFY that Wm. E. Conley, whose name is subscribed to the deposition or certificate or the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and to administer oaths to be used in any court of said State, and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for lands, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County, the 20th day of Apl., 1917.

[County Seal]

W. F. SCHNEIDER,

Clerk.

Recorded June 21, 1917, 9:20 A. M., at Request of H. S. Thompson.

JAMES FRAWLEY,

Recorder.

Territory of Alaska,
Second Division,
Cape Nome Precinct,—ss.

I, Hugh O'Neill, United States Commissioner for the Territory of Alaska, and ex-officio Recorder of Cape Nome Recording [88] District, for the Second Judicial Division of the said Territory of

Alaska, do hereby certify that I have compared the preceding with a certain agreement recorded in Book 202 at page 38 of the Records of said Recording District, and that the same is a true and correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the 31st day of January, 1919.

[Seal]

HUGH O'NEILL,

U. S. Commissioner and ex-officio Recorder.

(Endorsed on Back): "Hearing on defts. motion to make Geo. K. McLeod party plaintiff. #2779 in the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "A." Filed Feb. 1, 1919. Thos. McGann, Clerk. By W. C., McG., Deputy."

And plaintiff thereupon offered Exhibit "B," which was received in evidence, without objection, which is as follows:

Plaintiff's Exhibit "B."

#60671.

AGREEMENT.

THIS AGREEMENT made and entered into this 9th day of October, 1914, between GEORGE McLEOD, of Nome, Alaska, the party of the first part, and H. GREENBERG, of the same place, the party of the second part, WITNESSETH:

THAT, WHEREAS, the party of the first part heretofore commenced an action in the District Court for the District of Alaska, Second Division, en-

titled George K. McLeod, plaintiff, versus the Bessie Dredging Company, a corporation, defendant, and thereafter in said action secured and obtained judgment in the sum of thirteen thousand (\$13,000.00) dollars and legal costs taxed at three hundred fifty and 81/100 (\$350.81) dollars, amounting in all [89] to the total sum of thirteen thousand three hundred fifty and 81/100 (\$13,350.81) Dollars; and

WHEREAS, thereafter the party of the first part as plaintiff in said action sold under execution in said action, according to law, all the known personal and real property of the said Bessie Dredging Company, and described as follows: All of that certain unfinished dredge together with all fittings and belongings therewith connected or belonging, situated and located on No. 2 placer claim on Holyoke Gulch in the Cape Nome Mining & Recording District, District of Alaska, Second Division. Also all of the following described placer mining claims, all of which are situated on and surrounding the third beach line north of the town of Nome in the Cape Nome Mining & Recording District, District of Alaska, to wit:

- (a) The Rocksie Fraction;
- (b) The Bessie Bench Claim;
- (c) No. 4 placer claim on Holyoke Gulch;
- (d) Crawford Fraction;
- (e) No. 3 Placer claim on Holyoke Gulch;
- (f) Legan Tender, commonly known as the Legal Tender;
- (g) No. 2 placer claim on Holyoke Gulch;

and, thereafter, receive title thereto from the United

States Marshal, and thereafter by order of Court said sales were confirmed and the party of the first part is now the owner and in the possession of all of said personal and real property;

AND, WHEREAS, the parties hereto are desirous of selling and transferring all of said property from the party of the first part to the party of the second part on the terms hereinafter expressed;

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter stated it is agreed as follows:

1. That the party of the first part hereto simultaneously herewith shall, and does make, execute and deliver to the party of the second part by bill of sale and quitclaim deed all personal and real property above described, purchased by the party of the first part under said execution sale or sales in said above-mentioned action, the receipt of proper conveyance and bill of sale [90] of which is hereby acknowledged by second party.

2. That the party of the second part hereto and his assigns will pay or cause to be paid to the party of the first part, therefor the sum of thirteen thousand (\$13,000.00) dollars, the amount of said judgment, without interest, but including legal costs to the amount of Three Hundred Fifty and 81/100 (\$350.81) Dollars, without interest, the said amounts to be paid from the first proceeds from the sale or the first profits from the working or mining of any of said property, personal or real, above described, and mentioned, and described in the bill of sale and quitclaim deed simultaneously made, executed and de-

livered herewith; also that the party of the second part and his assigns will pay or cause to be paid in the same manner as above provided, the amount of the claim of the Bratnober Lumber Company against the said Bessie Dredging Company in the approximate sum of twenty-four hundred fifty (\$2450.00) dollars, if the party of the first part shall pay, or be compelled to pay, the said Bratnober Lumber Company's claim, including legal costs exclusive of attorney's fees; also that the party of the second part and his assigns will pay or cause to be paid in the manner as above provided, the claim of one Wm. A. Ewing, against the said Bessie Dredging Company, amounting to approximately the sum of four hundred (\$400.00) dollars.

3. That profits or workings and mining for the purpose of this agreement shall be computed by deducting from the gross output the actual expenses of mining and not including interest on investment in property or equipment. That the words "proceeds from the sale of" shall be deemed to include all moneys received by second party or his assigns on executory contracts or options for the purchase of said property or any part thereof.

4. That the party of the first part hereto shall not assign this agreement nor any of his rights thereunder; nor shall the same be assignable by the party of the first part except by operation [91] of law, and at all times the payments provided herein shall be a first lien against all the personal and real property herein described, but said payments shall only be payable at such time or times as the said property,

or any part thereof, shall be mined at a profit or sold, as hereinbefore provided.

5. It is mutually understood and agreed between the parties hereto that first party, without any other compensation, shall at all times lend and give his assistance to the party of the second part, other than financial assistance, in any effort the party of the second part shall make to sell or mine the property herein described in order to as speedily as possible adjust and settle the claims and demands herein mentioned.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this the day and year first above written.

GEORGE K. McLEOD. [Seal]

H. GREENBERG. [Seal]

Signed, sealed and delivered in the presence of:

IRA D. ORTON,

WILLIAM A. GILMORE.

United States of America,
Territory of Alaska,—ss.

THIS IS TO CERTIFY, that on this 9th day of October, 1914, before me, the undersigned, a Notary Public in and for the Territory of Alaska, personally appeared George K. McLeod and H. Greenberg, to me known to be the identical persons named in and who executed the within and foregoing instrument, and who acknowledged to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my notarial seal this the day and year last above written.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public for the Territory of Alaska, Residing
at Nome, Alaska.

(My commission expires July 27th, 1915.)

Recorded October 9, 1914, 4:50 P. M., at request
of Wm. A. Gilmore.

JAMES FRAWLEY,
Recorder,
F. R. Cowden,
Deputy, [92]

Territory of Alaska,
Second Division,
Cape Nome Precinct,—ss.

I, Hugh O'Neill, United States Commissioner for the Territory of Alaska, and ex-officio Recorder of Cape Nome Recording District, for the Second Judicial Division of the said Territory of Alaska, do hereby certify that I have compared the preceding with a certain agreement recorded in Book 174, at page 405, of the records of said recording district, and that the same is a true and correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the 31st day of January, 1919.

[Seal] HUGH O'NEILL,
U. S. Commissioner and ex-officio Recorder.

(Endorsed on Back): "Hearing defts. motion to make Geo. E. McLeod party plaintiff. #2779. In the District Court, Territory of Alaska, Second Division.

Herbert Greenberg, Plaintiff, vs. Alaska Mines Cor., Defendant. Plts. Ex. 'B.' Filed Feb. 1, 1919. Thos. McGann, Clerk. By W. C. McG. Deputy."

Thereupon plaintiff offered the note in evidence:

(Note received in evidence and marked Plaintiff's Exhibit "C," of which the following is a copy:)

[93]

Plaintiff's Exhibit "C."

25,000.00,

New York, April 17, 1919.

On or before January 15, 1918, for value received, the undersigned, Alaska Mines Corporation, promises to pay to Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of twenty-five thousand dollars (\$25,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three aggregating the sum of forty thousand dollars (\$40,000), all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid when due, and default shall continue, as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

(Stamped) : EMPIRE TRUST COMPANY. No. 34058. New York.

(Endorsed on Back) : Recd. \$2500.00 on a/c Apl. 17/17. (Signed) H. Greenberg.

Mr. O'NEILL.—I also offer the complaint of George K. McLeod in evidence to show wherein he swears that he is a resident of the City of New York.

Mr. CORCORAN.—That is also part of the answer?

Mr. O'NEILL.—Yes.

Mr. CORCORAN.—That is already in and not denied; these are admitted facts.

The COURT.—Already admitted.

Letter from George K. McLeod to Herbert Greenberg admitted in evidence, without objection, and marked Plaintiff's Exhibit "D," of which the following is a copy:

Plaintiff's Exhibit "D."

New York City, April 17th, 1917.

Herbert Greenberg. Esq., [94]

1476 Broadway,

New York, City.

My dear Mr. Greenberg:

In regard to agreement this day executed between us, I beg to advise that I am aware of the fact that you have given the Alaska Mines Corporation ten per cent (10%) credit on the notes secured by the mortgage, and it is agreeable to me to accept one-half of the proceeds of said note, less said deduction, until I receive the total amount.

If at any time, while the mortgage which you have receive has any value or vitality, I shall receive the

balance of Eleven Thousand (\$11,000) Dollars due, with interest if any as stated in the agreement, I will re-convey to you the eleven-fortieths (11/40) of said mortgage assigned to me by our agreement.

Yours very truly,
(Signed) GEORGE K. McLEOD.

(Endorsed on Back): "Hearing on defts. motion to make George K. McLeod party plaintiff. #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Cor., Defendant. Plts. Ex. 'D.' Filed Feb. 1, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy."

Exemplified copy of order discharging lien of attachment admitted in evidence, without objection, and marked Plaintiff's Exhibit "E," of which the following is a copy:

Plaintiff's Exhibit "E."

No. —.

THE PEOPLE OF THE STATE OF NEW YORK

By the Grace of God Free and Independent.

To all to whom these presents shall come or may concern, GREETING:

KNOW YE, That we having examined the records and files in the office of the Clerk of the (Seal) County of New York and Clerk of the Supreme Court of said State for said County, do find a certain order there remaining, in the words and figures following, to wit: [95]

At a Special Term of the Supreme Court, Part 1 thereof, held at the County Court House, City and State of New York, on the 27th day of September, 1918, Present: Hon. EUGENE A. PHILBIN, Justice.

No. 1260—1918.

GEORGE K. McLEOD,

Plaintiff,

vs.

HERBERT GREENBERG,

Defendant.

The defendant, Herbert Greenberg, having appeared in this action, and having given an undertaking in the sum of five thousand two hundred forty-three and 44/100 (\$5,243.44) dollars to authorize the discharge of a lien of attachment obtained by the plaintiff herein on the defendant's bank account in the Hudson Trust Company, and of a certain note for twenty-five thousand (\$25,000) dollars, dated April 17th, 1917, made by the Alaska Mines Corporation, due on or before January 15th, 1918, with six (6%) per cent interest, and of the interest of the defendant as represented by the Empire Trust Company, as agent for the defendant in said note made by the Alaska Mines Corporation, and having moved to discharge such attachment;

NOW, on reading and filing the affidavit of Powell Crichton, verified September 16th, 1918, in support, and the memorandum of Clarence S. Nettles in opposition to said motion, it is

ORDERED, that the attachment herein granted on the 15th day of January, 1918, against the property of the above-named Herbert Greenberg be, and the same is hereby discharged as to the [96] whole of said property, and that the Sheriff deliver to the defendant the property so attached remaining in his hands, as required by law, and the Alaska Mines Corporation is hereby discharged from said attachment in every respect, and the Empire Trust Company, as agent for the defendant, is hereby discharged in every way from its claim, and said agent, against the said Alaska Mines Corporation in respect to said note.

ENTER.

E. A. P.

J. S. C.

(Endorsed on Back): "County Clerk's Index, No. 1260, 1918. Supreme Court, County of New York. George K. McLeod, Plaintiff, against Herbert Greenberg, Defendant. Copy Order. Henry Bradshaw, Attorney for Defendant. Powell Crichton, Counsel. 120 Broadway, Borough of Manhattan, New York."

All which we have caused by these presents to be exemplified, and the seal of our said Supreme Court to be hereunto affixed.

Witness Hon. F. B. DELEHANTY, a Justice of the Supreme Court, for the County of New York, the 28th day of Sept., in the year of our Lord, one thousand nine hundred and 18, of our Independence the one hundred and 43.

[Seal]

WM. F. SCHNEIDER,
Clerk.

F. B. Delehanty, a Presiding Justice at a Special Term of the Supreme Court, of the State of New York, for the County of New York, do hereby certify that William F. Schneider, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form. [97]

Dated New York, Sept. 28th, 1918.

F. B. DELEHANTY,
Justice of the Supreme Court of the State of New
York.

State of New York,
County of New York,—ss.

I, William F. Schneider, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. F. B. Delehanty, whose name is subscribed to the preceding certificate, is presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 28th day of September, 1918.

[Seal]

WM. F. SCHNEIDER,
Clerk."

(Endorsed on Back): "Hearing on defts. motion to make Geo. K. McLeod party plaintiff, #2779. In the District Court Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. 'E.' Filed Feb. 1, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy."

Thereupon the Court took the matter under advisement until Saturday, February 8, 1919. [98]

And be it further remembered, that thereafter, and on Saturday, the 8th day of February, 1919, at 11 o'clock A. M. of said day said above-entitled court regularly convened, and the following proceedings were had in said above-entitled cause: The Court denied the motion of the defendant upon the ground that the plaintiff was the trustee of an express trust, and, as such was authorized to sue in his own name. The defendant duly excepted to said ruling, and the exception was allowed.

"Mr. COCHRAN.—In view of the ruling of the Court, it would be necessary for the defendant to amend its answer and set up certain facts in relation to offsets of Mr. McLeod. I would not like for the case to be set for trial, Mr. O'Neill, before a week. In the meantime I can make such amendments.

The COURT.—I will set the case down for trial—

Mr. COCHRAN.—I would like to have it go beyond next Saturday.

The COURT.—It will go beyond next Saturday, that is what I am trying to do, to get a date; it will be a week from Monday. The case will be set down for trial on the 19th day of this month. If counsel

wishes time to file an amended answer he has the time until Wednesday of next week, so that opposing counsel can prepare to make any answer to it, if he wishes.”

And be it further remembered, that thereafter, and upon the 19th day of February, 1919, the said above-entitled court, regularly convened and the following proceedings were had in the said above-entitled cause:

The defendant filed and presented to the Court its motion for a continuance of the trial of said cause, as follows:

*“In the District Court for the Territory of Alaska,
Second Division.*

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

Motion for Continuance. [99]

Comes now the defendant and moves the Court for a continuance of the trial of the above-entitled action for a period of time sufficient to enable the defendant to secure the testimony of one Myron J. Brown, the secretary of the Empire Trust Company of New York City, New York, who is a necessary witness on behalf of the defendant in the trial of said action.

This motion is made and based upon the affidavit of O. D. Cochran, hereto attached, and upon the records and files in the above-entitled court and cause.

O. D. COCHRAN,
Attorney for Defendant.

Affidavit of O. D. Cochran.

United States of America,
Territory of Alaska,—ss.

O. D. Cochran, being first duly sworn, deposes and says:

That he is the attorney for the defendant in the above-entitled action; that the Empire Trust Company is a banking corporation having its office and doing business in the City of New York, State of New York, and that Myron J. Brown is the Secretary of said company.

That said Myron J. Brown resides in said city of New York and is a necessary witness for the defendant in the defense of the foregoing entitled action; that the defendant expects to prove by said witness that on the 15th day of January, 1918, the said Empire Trust Company held for collection under authority from the plaintiff herein, the identical promissory note sued upon in this action. That on the said last-named date, Mr. Walter S. Reed, the Secretary and Treasurer of the defendant herein, tendered to the said Empire Trust Company a check drawn upon the said Empire Trust Company in favor of the said Empire Trust Company, for the sum of \$23,512.50, in payment of the unpaid balance due upon said date [100] upon the promissory

note sued upon herein, said note being signed by the Alaska Mines Corporation, the defendant herein. That at said time the defendant, Alaska Mines Corporation, had upon deposit and subject to its check, with the Empire Trust Company, a sum of money in excess of the sum of \$24,000.00. That at the time said Walter S. Reed, on behalf of the defendant herein, tendered to said Empire Trust Company its said check, the said Walter S. Reed explained to the said Myron J. Brown that said note sued upon herein was the last of a series of notes secured by the mortgage sought to be foreclosed in this action, and that as a condition of the payment of said note a satisfaction of the said mortgage was required.

That said Myron J. Brown, at said time, acting upon behalf of said Empire Trust Company, stated that it, the said Empire Trust Company, was unable to give any satisfaction of said mortgage, and for that reason declined to accept the tender of the payment of said promissory note.

That the said defendant, Alaska Mines Corporation, has, ever since the said 15th day of January, 1918, had upon deposit, subject to its check, in said Empire Trust Company in the City of New York, State of New York, a sum of money in excess of the sum of \$24,000.00

That affiant believes the defendant has a substantial defense to said action upon the merits.

That said defendant cannot safely go to trial without the evidence of said Myron J. Brown.

That the continuance of the trial of said action is

not sought for delay merely, but that justice may be done in the premises.

That on account of the quarantine being duly declared and maintained, no mails were permitted to arrive or depart from Nome, Alaska, between the 5th day of November, 1918, and the 12th day of February, 1919, and that the defendant has had no opportunity to [101] secure the evidence of the said Myron J. Brown since the making up of the issue relating to the facts sought to be proven by said witness.

That the facts sought to be proven by said witness are not cumulative and cannot, to affiant's knowledge, be proven by any other person than said witness or some other officer of said Empire Trust Company, in the said city of New York.

O. D. COCHRAN.

Subscribed and sworn to before me this the 19th day of February, 1919.

[Notary Seal] LAWRENCE S. KERR,
Notary Public in and for the Territory of Alaska.

(My commission expires May 27, 1922.)

(Endorsed on back): No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, Defendant. Motion and Affidavit. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Feb. 19, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant."

Whereupon the plaintiff through his attorney, Hugh O'Neill, requested that he have until Friday, the 21st day of February, 1919, at two o'clock P. M. to file an affidavit of resistance for such motion of continuance, which request was granted by the Court, and further proceedings continued until Friday, February the 21st, 1919, at two o'clock P. M. of said date.

And be it further remembered, that thereafter and upon the 21st day of February, 1919, at the hour of two o'clock P. M. of said date, said above-entitled court regularly convened and the following proceedings were had in said above-entitled cause:

The plaintiff, through his said attorney, filed and presented an affidavit in resistance to the motion of the defendant for a continuance of the trial of said cause, which said affidavit [102] is as follows:

*“In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

Affidavit of Hugh O'Neill.

Territory of Alaska,
Second Division,—ss.

Hugh O'Neill, being first duly sworn, deposes and says: That he is the attorney for the plaintiff in the above-entitled action. That on the 30th day of September, 1918, plaintiff caused the depositions of himself and William A. Gilmore to be taken at the office of O. D. Cochran, the attorney for the defendant; that on said day O. D. Cochran, Esq., counsel for the defendant, was informed and advised by affiant and William A. Gilmore that the above-entitled cause would be set for trial as soon as the Court would consent to hear the same. That defendant had the entire month of October and the early part of November, 1918, within which to sue out a commission to take the testimony of Myron J. Brown, or of any other witness that it deemed important. That had defendant forwarded a commission to take the testimony of the said Myron J. Brown, or any other person, to New York during any part of the month of October, the same would have been returned to Nome at this time, notwithstanding any quarantine regulations. That the quarantine referred to in defendant's affidavit was raised on the 15th day of February, 1919, and all of the outside mail destined to Nome has now arrived. That defendant or its counsel made no effort whatsoever to take any testimony until the above-entitled cause was called for trial, on the 19th day of February, 1919. That defendant has failed, refused and neglected to tender [103] the

sum of twenty-three thousand five hundred and twelve and 50/100 dollars (\$23,512.50), or any other sum, into court for the payment of the note herein sued upon, or otherwise. That the testimony of Myron J. Brown, as set out in the affidavit of defendant is immaterial, for the reason that the said Walter S. Reed, the Secretary and Treasurer of the defendant herein, at the time he tendered defendant's uncertified check for the amount mentioned in said affidavit he demanded a written release of the mortgage sued upon herein, to be executed by this plaintiff and one George K. McLeod, and that said defendant refused to deliver said check, or to pay said note under any other conditions. That plaintiff then was, and at all times has been, ready, able and willing to release the mortgage sued upon herein, upon the payment of the amount due thereon. That said defendant never made at any time any lawful tender to plaintiff of the payment of said note, at said time and place or elsewhere, or at all. That the motion for a continuance made by defendant is made solely for the purpose of delaying the trial of the above-entitled cause, and embarrassing the plaintiff herein. That defendant has shown no diligence whatsoever in obtaining the testimony of the said Myron J. Brown. That said Myron J. Brown at no time said that he was unable to give any satisfaction of said mortgage, but, on the contrary, was then and there ready, able and willing to give a satisfaction of the said mortgage signed by Herbert Greenberg, and to surrender the said note, and to have a marginal release of the said mortgage entered as of record at

Nome, Alaska, upon the payment of the amount due. That defendant has no defense to the said action upon the merits, and great injustice will be done to plaintiff if this action is continued for trial.

HUGH O'NEILL.

Subscribed and sworn to before me this 21st day of February, 1919.

[Notary Seal]

L. E. WEITH,

Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires Nov. 14, 1921.)" [104]

(Endorsed on back): "No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Affidavit of Hugh O'Neill. Filed in the office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. Hugh O'Neill, Attorney for Plaintiff."

And said motion for a continuance was thereupon duly argued by the Court by counsel, and the Court thereupon denied the same, to which ruling of the Court defendant duly excepted, and an exception was by the Court allowed.

Whereupon the following evidence was taken:

Mr. O'NEILL.—I now offer in evidence the deposition of HERBERT GREENBERG, the plaintiff, and taken in his own behalf, as follows:

**Deposition of Herbert Greenberg, in His Own
Behalf.**

Testimony of witness:

Direct Examination by WILLIAM A. GILMORE.

My name is H. Greenberg, I am the plaintiff in this case; I know what the paper is you hand me; it is a note against the Alaska Mines Corporation for twenty-five thousand dollars and is the one sued upon in this foreclosure suit, it is the original note signed by the Alaska Mines Corporation by James Gayley, president. I was present when the note was signed, and I know the signature to be that of the president of the company at that time. That note bears on the back of it an endorsement of the payment of the sum of twenty-five hundred dollars, the date the note was made, April 17th, 1917, that payment was made under an agreement, and I deducted it from the note; it was a payment endorsed thereon under an agreement between myself and the Alaska Mines Corporation. There is due upon said note the sum of twenty-two thousand [105] five hundred dollars principal, together with interest from the date of the note at six per cent per annum, no part of the said principal or interest due upon said note has ever been paid, and the whole thereof is now due.

I expect to go outside this fall on the last boats.

Mr. GILMORE.—I offer this note in evidence and ask that it be marked Exhibit 1. (Said note being received in evidence and being marked Plaintiff's Exhibit "A," and is as follows:)

(Deposition of Herbert Greenberg.)

“\$25,000.00. New York, April 17, 1917.

On or before January 15, 1918, for value received, the undersigned, Alaska Mines Corporation, promises to pay Herbert Greenberg, or order, at Empire Trust Company, 120 Broadway, in the Borough of Manhattan, City of New York, the sum of Twenty-five thousand dollars (\$25,000) with interest at the rate of six per centum per annum, payment to be made in gold coin of the United States. If suit shall be commenced for recovery of any amount due upon this note, the undersigned agrees to pay, as attorney's fees thereon, such additional sum as the Court may adjudge reasonable.

This note is one of a series of three, aggregating the sum of Forty Thousand Dollars (\$40,000), all secured by a certain mortgage, executed by the undersigned, of even date herewith, and it is hereby stipulated that if this note, or any of them, is not paid on the day when due, and default shall continue as provided in said mortgage, all of said notes shall become due and payable.

ALASKA MINES CORPORATION.

By JAMES GAYLEY,

President.

(Empire Trust Company)

34058.

(New York)

(Endorsed on Back): “Recd. \$2500.00 on a/c Apl. 17/17. H. Greenberg. District Court, Alaska, Second Division, Greenberg vs. Alaska Mines [106] Corp. Plaintiff's identification 1, Nome, Alaska,

(Deposition of Herbert Greenberg.)

Sept. 30, 1918, L. S. Kerr, Notary Public. #2779.
In the District Court Territory of Alaska, Second
Division. Herbert Greenberg, Plaintiff, vs. Alaska
Mines Cor., Defendant. Plts. Ex. 'A.' Filed Feb.
21, 1919. Thos. McGann, Clerk. By W. C. McG.,
Deputy."

Cross-examination by O. D. COCHRAN.

WITNESS.—(Continuing.) That note was
made payable at the Empire Trust Company, 120
Broadway, in the Borough of Manhattan, City of
New York. The Empire Trust Company had this
note for collection on the 15th day of January, 1918,
they had this note afterwards and probably until
January 18th, I don't remember; I received it from
them I should judge about a week after that time. I
received it some time about the 22d or 24th of Jan-
uary, 1918.

Q. Now, referring to the attachment levied in the
action brought against you by George K. McLeod, in
the Supreme Court for the County of New York, you
allege in your answer that you deny that said attach-
ment and garnishment levied against certain prop-
erty by the plaintiff, in said action, is in full force
and effect, and deny that the same has not been re-
leased, vacated or set aside. To your own knowl-
edge, do you know whether it is or not?

Mr. GILMORE.—Have you been advised that it
was?

A. Yes, and I furnished a bond for it. The at-
tachment is released. I was not there when the bond
was furnished. I received a telegram from my at-

(Deposition of Herbert Greenberg.)

torneys in New York that the bond was given and the attachment released.

Q. If the attachment had been released it has only been released within the last few days, is that correct? A. About a week or ten days ago.

Q. It was not released at the time the defendant filed this answer, was it? [107]

A. It was not.

Redirect Examination by Mr. GILMORE.

Q. The other two notes mentioned in this note have been paid have they not? A. Yes, sir.

Q. This is the only note covered by the mortgage that is unpaid? A. Yes, sir.

Thereupon the plaintiff offered the further testimony contained in the redirect examination of Herbert Greenberg, which offer was objected to by Mr. Cochran, and objection sustained by the Court; said evidence so offered and rejected being as follows:

Q. Now, Mr. Cochran, asked you about a memorandum of agreement between yourself and Mr. McLeod, whereby it purports to assign to Mr. McLeod an eleven-fortieths interest in the mortgage sued upon in this case; what was the object of giving that assignment to Mr. McLeod?

Mr. COCHRAN.—I object to that as immaterial.

Mr. GILMORE.—I want to show why he gave it to him.

Mr. COCHRAN.—I most respectfully have to insist upon that objection; any written instrument speaks for itself.

(Deposition of Herbert Greenberg.)

The COURT.—Read that again. (Last question repeated.)

Mr. O'NEILL.—Before your Honor rules, I would like to be heard on that proposition.

The COURT.—Go ahead; I will hear from you both.

Mr. O'NEILL.—This is just rehashing the proposition that came up when counsel made a motion to have Mr. McLeod made a party; Mr. Cochran brought that out, about the agreement, that was entered into between McLeod and Greenberg. Mr. Gilmore wanted to show on the redirect examination of Greenberg that McLeod had no legal title to this note or to this mortgage, and that Greenberg gave McLeod an assignment of that just to protect him from an anterior obligation that had existed between Greenberg and McLeod. The court has already passed upon that [108] proposition in denying the motion of the defendant to have McLeod made a party.

The COURT.—I passed on the agreement, whether or not it made out an express trust, or not.

Mr. COCHRAN.—That is why your Honor held my objection was good.

The COURT.—The agreement is in evidence.

Mr. COCHRAN.—It is admitted in the pleadings.

Mr. O'NEILL.—It is not in evidence in this trial.

Mr. COCHRAN.—It is in evidence here.

Mr. O'NEILL.—This whole proposition cannot be rehashed at the trial of this case now; I submit this is competent evidence.

(Deposition of Herbert Greenberg.)

The COURT.—You have the agreement?

Mr. O'NEILL.—It is not proper evidence to be put in at this time; that is proper evidence in rebuttal, but Greenberg is suing upon this note. Now, Greenberg in suing upon this note has the right to show an agreement which is in the pleadings at bar, to assign a certain interest in that note, and McLeod is only made a party to the assignment by way of security; in other words, it is only pledged to him, or sort of a loan given upon it, but Mr. Greenberg is the real person in interest; that was the purpose of Mr. Gilmore in asking that question.

The COURT.—It seems to me I have passed on the question of the admissibility of that agreement, and as to what it stood for, but there is an express trust, and it spoke for itself, and it will speak for itself in rebuttal. I will sustain the objection.

A. Just to protect him, so I can pay him the money I owe him, McLeod.

Mr. O'NEILL.—I will read the next question, but it is covered by the objection.

Q. How much money did you owe McLeod at the time this mortgage was given, on the 17th day of April, 1917, on this particular deal? [109]

Mr. COCHRAN.—That is objected to as immaterial. Do I understand that all objections are to be reserved upon the stipulation, *t* to be taken at the time of the trial?

Mr. GILMORE.—Yes.

Mr. COCHRAN.—That is the same thing.

The COURT.—It will be a question of how much

(Deposition of Herbert Greenberg.)

he owed on that note that is a fact.

Mr. COCHRAN.—It is not a question of how much he owed McLeod, nothing to do with the note; that is another matter, an irrelevant matter entirely, a different transaction; your Honor held the transaction between McLeod and Greenberg was not material here.

The COURT.—All right; I misunderstood it.

Mr. COCHRAN.—It is the same thing, your Honor.

The COURT.—Very well; same ruling.

A. I paid \$2,250.00 on the eleventh interest.

Q. On the eleven-fortieths?

A. Yes, sir.

Q. Leaving a balance due of about how much.

A. About \$8,850.00.

Q. Was that all that was due to Mr. McLeod on the date the note fell due, January 15th, 1918?

A. \$8,850.00?

Q. Yes, sir. State whether or not Mr. McLeod was indebted to you personally, for any sums of money that you claimed as against this eight thousand dollars. A. Yes, sir.

Q. How much? A. Six thousand. [110]

Q. Leaving a balance due McLeod of how much on this present assignment? A. \$2,850.00.

Q. And was there more than the sum of \$2,850.00 due to Mr. McLeod on January 15, 1918?

Mr. COCHRAN.—My objection runs to all these questions, that they are immaterial.

A. There was not.

(Deposition of Herbert Greenberg.)

Mr. O'NEILL.—The next question is on a different subject, and is:

Q. State whether or not you are able and ready, and have been able, ready and willing to pay McLeod the balance any time the note is paid.

Mr. COCHRAN.—That is objected to as wholly immaterial.

The COURT.—Sustained.

Mr. O'NEILL.—No objection in the deposition.

Mr. COCHRAN.—The stipulation severs that.

A. Yes, sir.

Mr. O'NEILL.—The next question will be covered by the same objection.

Q. And you are willing to pay him now?

The COURT.—Objection sustained.

A. Now; yes, sir.

Thereupon the plaintiff offered in evidence the deposition of Mr. WILLIAM A. GILMORE, a witness on behalf of the plaintiff, which was received in evidence and is as follows:

Deposition of William A. Gilmore.

My name is William A. Gilmore; my profession is that of a lawyer; I have practiced in the City of Nome since 1900. I am familiar with the pleadings in this case, and I am familiar with the fees charged for legal services in the City of Nome.

Q. What would you consider a reasonable fee for like services as the note sued upon in this case?

A. Well, in this case we have alleged a three thousand dollar fee, I think, that is very reasonable; in

(Deposition of William A. Gilmore.)

my opinion it is a very [111] reasonable attorney's fee.

WITNESS.—(Continuing.) I am familiar with the note sued upon in this case—as attorney for Mr. Greenberg I had charge of the collection of this note—on the 3d day of January, 1918, I mailed the note to the Empire Trust Company, the company named in the note as the place of payment, with certain written instructions, a copy of the instructions being herewith offered.

Mr. O'NEILL.—I offer this paper, being the one referred to by the witness.

Mr. COCHRAN.—I object to the offer on the grounds that it is irrelevant and immaterial.

The COURT.—I will admit it for what it is worth; you may have your exception.

Said paper being admitted in evidence, marked Plaintiff's Exhibit "B," and is as follows:

Plaintiff's Exhibit "B."

(COPY.)

Empire Trust Co.

120 Broadway, New York City, N. Y.

Gentlemen:

Enclosed herewith please find a promissory note of the Alaska Mines Corporation, 71 Broadway, New York City, in the principal sum of \$25,000 with six per cent interest, bearing date April 17th, 1917, and due on the 15th day of January, 1918. There is an endorsement of \$2,500 and is admitted received on the 17th day of April, 1917, the date of the note. The

balance with six per cent interest from said date will be due and payable on the 15th day of January, 1918, and I want you to please present the note to the Alaska Mines Corporation, on that date for payment, and if the same is not paid, please do not protest the note, but return it here to me as the note is amply secured, and I am instructed to begin foreclosure proceedings if the said note is not paid. [112]

I do not want you to wire any offers for further time on the note as none such offers will be considered. Unless the note is paid in full with interest on presentation, kindly return the same to me. If the note is paid on presentation, then please deduct your charges and deposit the balance to the credit of Herbert Greenberg in the Hudson Trust Company, 39 Broadway, New York City, and immediately wire me at my expense.

Very truly yours,

WILLIAM A. GILMORE.

WAG/L.

Enc. 1.

[Endorsed]: #2779. January 3d. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corpo., Defendant. Plts. Ex. "B." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McGuire, Deputy. District Court, Alaska, Second Div. Greenberg v. Alaska Mines Corp. Plaintiff's Identification No. 2. Nome, Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public.

(Deposition of William A. Gilmore.)

WITNESS.—(Continuing.) I enclosed the note with the original of this letter and mailed it on this date to the Empire Trust Company. That is an exact copy of the original letter, except the original had on it my Seattle Address, and I believe it does not show in this copy. On the 15th of January I received a telegram from the Empire Trust Company—I have here the original telegram from the Empire Trust Company to myself.

Mr. O'NEILL.—I offer this paper in evidence.

Mr. COCHRAN.—The offer is objected to on the ground that the same is irrelevant and immaterial.

The COURT.—Objection is overruled.

To which ruling of the Court the defendant excepted, and an exception was allowed. Telegram received in evidence and marked Plaintiff's Exhibit "C," and is as follows: [113]

Plaintiff's Exhibit "C."

WESTERN UNION TELEGRAM.

Received at 113 Cherry St., Seattle, Wash. Always Open.

Jan. 15, PM. 2-40.

A 449CH 31 Coll.

Q New York, NY 45 OP 15

William A. Gilmore

Attorney 300 Central Bldg., Seattle, Wash.

Alaska Mines made formal tender balance Greenberg note at the same time demanding that satisfaction piece should accompany note complying with in-

(Deposition of William A. Gilmore.)

structions your telegram are returning note via registered mail.

EMPIRE TRUST CO.

(Endorsed on same): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. District Court, Alaska, 2nd Div. Greenberg vs. Alaska Mines Corp. Plaintiff's Identification No. 3. Nome, Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public. (Notary Seal.) Plts. Ex. "C." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG.

WITNESS.—(Continuing.) On the same date, January 15th, 1918, which was the date of the maturity of the note, the Empire Trust Company wrote me a letter which in due course was received by me through the mail. I have here the original letter from the Empire Trust Company to myself with reference to this note.

Mr. O'NEILL.—I offer this letter in evidence.

Mr. COCHRAN.—We object to the offer as being irrelevant and immaterial.

The COURT.—The objection is overruled.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

The letter was received in evidence, marked Plaintiff's [114] Exhibit "D," and is as follows:

Plaintiff's Exhibit "D."

EMPIRE TRUST COMPANY.

Main Office:

120 Broadway.

New York, January 15th, 1918.

In re Collection No. 34058.

William A. Gilmore, Esq., Attorney

300 Central Building,

Seattle, Washington.

Dear Sir:

Referring to the Greenberg note sent us in your letter of January 3rd for collection, we beg to advise you, that we have given the Alaska Mines Corporation formal notice that this note was due and payable at this office to-day, viz., January 15th. We further wish to advise you, that we have to-day received formal tender in payment of the said note, but the Company demanded that the satisfaction of the mortgage given in connection with these notes should accompany the note now in our possession. We are enclosing herewith a copy of the letter received from the Alaska Mines Corporation accompanying their tender. Subsequent to the receipt of this tender we received your telegram. We immediately communicated the contents thereof to the Mines Corporation, but the officer in charge intimated that it had been the unanimous opinion of his associates that the company in making this payment should be amply protected by a satisfaction piece.

As there was nothing further for us to do on the

(Deposition of William A. Gilmore.)

receipt of your telegram we telegraphed you as follows:

“Alaska Mines made formal tender balance Greenberg note *a* the same time demanding that satisfaction piece should accompany note. Complying with instructions your telegram are returning note via registered mail. [115]

In accordance therewith we are enclosing herewith note dated April 17, 1917, in the sum of Twenty-five Thousand Dollars (\$25,000.), payable January 15th, 1918, receipt of which we shall be obliged if you would acknowledge.

Yours very truly,

M. J. VANCE,

Asst. Secretary.

(Endorsed on Back): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. “D.” Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. District Court, Alaska, Second Division. Greenberg vs. Alaska Mines Corporation. Plaintiff’s Identification No. 4. Nome, Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public. (Notary Seal)

WITNESS.—(Continuing.) And enclosed with the letter and referred to in this letter was a notice, or a copy of a notice of the Alaska Mines Corporation, served on the Empire Trust Company, with reference to the note. I have here a copy of the Empire Trust Company enclosed to me.

Mr. O’NEILL.—I offer this paper in evidence.

Mr. COCHRAN.—We object to the offer as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant duly excepted, and an exception was allowed. Said paper being received in evidence, marked Plaintiff's Exhibit "E" and is as follows:

Plaintiff's Exhibit "E."

COPY.

ALASKA MINES CORPORATION.

71 Broadway.

New York, January 15, 1918. [116]

Gentlemen:

We understand that you hold for collection a certain note executed by this Company April 17, 1917, in favor of Herbert Greenberg, in amount \$25,000, and upon which \$2500 has already been paid, leaving a net amount of \$22,500 with interest thereon for 9 months at 6%, or a total of \$23,512.50.

We beg to tender you herewith check in payment of this note and inasmuch as this is the last of a series of notes which were secured by a mortgage on certain property at Nome, Alaska, we require a satisfaction of said mortgage; furthermore, we have been advised by Mr. George K. McLeod that he is the owner of record of a certain interest in the mortgage referred to above, and we, therefore, further require that Mr. McLeod join in the execution of the

(Deposition of William A. Gilmore.)

satisfaction of said mortgage.

Yours very truly,
(Signed) WALTER S. REED,

Treasurer.

To Empire Trust Co.,
120 Broadway,
New York City.

(Endorsed): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "E." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Dep. District Court, Alaska, Second Div. Greenberg vs. Alaska Mines Corp. Plaintiff's Identification No. 5, Nome, Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public. (Notary Seal.)

WITNESS.—(Continuing.) I replied by night letter or telegram. I don't remember which, the same day I received the cable from the Empire Trust Company, the 15th day of January, 1918, notifying them to present the note and if it were not paid to return it as directed in my letter. I cannot find a copy of that cable and Mr. Greenberg does [117] not seem to have it. Thereafter and in due course of the mail the Empire Trust Company returned the note to me. The Empire Trust Company had this note in their possession up until the 17th or 18th of January, or a day or two after that date I presume. In the latter part of January, 1918, I received a letter from the law firm of Beekman, Menken & Griscom, of 52-54 Williams Street, New York.

(Deposition of William A. Gilmore.)

Q. Does that firm of attorneys represent the defendant?

A. Yes, sir. In other litigation that I have been connected with the records shows this legal firm was the law firm representing the defendant Alaska Mines Corporation, and I believe have been ever since and now are its New York counsel, and on the 24th day of January, 1918, they sent me a letter in reference to this note. I have the original letter here bearing on the account.

Mr. O'NEILL.—I offer this letter in evidence.

Mr. COCHRAN.—The evidence is objected to as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant excepted, and an exception was allowed. Said letter being received in evidence and marked Plaintiff's Exhibit "F," and is as follows:

Plaintiff's Exhibit "F."

BEEKMAN, MENKEN & GRISCOM,

#52-54 William Street,

New York.

January 24, 1918.

William A. Gilmore, Esq.,

300 Central Building,

Seattle, Wash.

In Re Alaska Mines Corporation.

Dear Sir:

We are attorneys for the Alaska Mines Corporation, and at their request are writing you to give you

a statement of the situation [118] with regard to the balance due, to wit, the sum of twenty-two thousand five hundred dollars and interest on the last note held by your client, Herbert Greenberg.

On January 14th the Alaska Mines Corporation wrote the Empire Trust Company stating that it had expected to make payment of said note on January 15th, but that one George K. McLeod had served a notice that Mr. Greenberg had executed a certain assignment to Mr. McLeod of a part interest in the note, together with the mortgage securing the same, and that Mr. McLeod had advised that the assignment of his interest was of record at Nome.

On January 15th the Alaska Mines Corporation tendered payment of the note at the Empire Trust Company, but required a satisfaction of the mortgage to be given jointly by Mr. Greenberg and Mr. McLeod.

On or about January 15th the Alaska Mines Corporation was served with a warrant of attachment in a case in the Supreme Court County of New York, entitled George K. McLeod, Plaintiff, against Herbert Greenberg, Defendant, in which the plaintiff seeks to recover \$4,657.50 with interest.

The Alaska Mines Corporation has acted in good faith in this matter, and are willing and anxious to pay the note if the proper satisfaction of the mortgage release of Mr. McLeod's claim is secured. You, of course, realize that the corporation could not with safety ignore Mr. McLeod's claim.

We suggest that you or your client and Mr. Mc-

(Deposition of William A. Gilmore.)

Leod arrange some settlement of your differences so as to permit payment of the note and the execution and delivery to our client of a proper satisfaction piece and release.

Please advise us what you may be able to suggest to meet the situation.

Yours very truly,

BEEKMAN, MENKEN & GRISCOM. [119]

(Endorsed): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "F." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. District Court, Alaska, Second Div. Greenberg vs. Alaska Mines. Plaintiff's Identification No. 6 (2 pages) Nome, Alaska. Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) I replied to this communication received from the attorneys for the defendant on the 1st day of February, 1918, in San Francisco. I sent them a night letter a true copy of which I have here.

Mr. O'NEILL.—I offer this letter in evidence.

Mr. COCHRAN.—The offer is objected to on the grounds of being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court defendant excepted and an exception was allowed. Said letter being received in evidence and marked Plaintiff's Exhibit "G," and is as follows:

Plaintiff's Exhibit "G."

**POSTAL TELEGRAM CABLE COMPANY.
NIGHT LETTERGRAM.**

San Francisco, Cal., Feb. 1, 1918.

Beekman, Menken & Griscom,

52 Williams Street, New York City, N. Y.

Your letter twenty-fourth forwarded here. Was arranging begin foreclosure proceedings to collect note believing Alaska Mines stalling on payment. Notified Empire Trust Company surrender note if paid and Greenberg would satisfy record at Nome, which is all Alaska law requires. McLeod has balance nine thousand dollars due from deal and Greenberg has counterclaim against him for six thousand dollars, leaving balance due McLeod three thousand dollars which Greenberg willing to pay. McLeod will not accept. Greenberg intends fight case through courts. Greenberg perfectly solvent and able to pay any judgment McLeod obtains. We [120] are willing to forward and surrender note with release and satisfaction in full signed by Greenberg alone upon receipt payment principal and interest to date presentation. If this is satisfactory to your company will cable Nome stop foreclosure proceedings. Answer here care Golden West Hotel.

WILLIAM A. GILMORE.

(Endorsed): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "G." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy.

(Deposition of William A. Gilmore.)

WITNESS.—(Continuing.) On the next day I received a short cable from them the original of which I have here.

Mr. O'NEILL.—I offer this telegram in evidence.

Mr. COCHRAN.—The offer is objected to as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant excepted, and an exception was allowed. Telegram received in evidence and marked Plaintiff's Exhibit "H," and is as follows:

Plaintiff's Exhibit "H."

P O S T A L T E L E G R A M C O M M E R C I A L
C A B L E S .

TELEGRAM.

New York, Feb. 2d, '18.

Wm. A. Gilmore,

Golden West Hotel, San Fran.

Your telegram relative Alaska Mines matter received unable communicate with our clients to-day but will do so first thing Tuesday and wire you.

BEEKMAN, MENKEN AND GRISCOM.

(Endorsed): #2779. In the District Court Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "H." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. [121] District Court, Alaska, Second Div. Greenberg vs. Alaska Mines Corp. Plaintiff's Identification 8.

(Deposition of William A. Gilmore.)

Nome, Alaska. Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) And on the 6th day of February I received a night letter from them the original of which I have here.

Mr. O'NEILL.—I offer this paper in evidence.

Mr. COCHRAN.—Defendant objects to the offer as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant excepted and an exception was allowed. Said paper being received in evidence and marked Plaintiff's Exhibit "I," which is as follows:

Plaintiff's Exhibit "I."
NIGHT LETTERGRAM.

New York, Feb. 6, '18.

William A. Gilmore,

Golden West Hotel, San Fran.

Alaska Mines Company at all times ready and willing to pay Greenberg note but even assuming that it should disregard formal notice assignment served by McLeod attachment referred to in our letter Jany twenty-fourth acts as absolute injunction under laws of this state and disregard thereof would entail severe penalties not to mention possible liability for any judgment up to the amount of the note recovered by McLeod in the action here. We stand ready to do anything possible to facilitate payment of note but under all circumstances we are placed in a most embarrassing position. If you have any suggestions as

(Deposition of William A. Gilmore.)

to a course which would permit our client to make payment and at the same time properly protect his interest please advise us.

BEEKMAN, MENKEN & GRISCOM.

[Endorsed]: #2779. In the District Court Territory of Alaska, Second Division. [122] Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp., Defendant. Plts. Ex. "I." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. District Court, Alaska, Second Div. Greenberg vs. Alaska Mines Corp. Plaintiff's Identification No. 9, Nome Alaska. Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) On the next day, February 7th, 1918, I replied to this wire, and sent them either a night letter or a day telegram, the correct copy of which I have here.

Mr. O'NEILL.—I offer this paper in evidence.

Mr. COCHRAN.—Defendant objects to the offer as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant excepted and an exception was allowed. Said paper being received in evidence and marked Plaintiff's Exhibit "J," and being as follows:

Plaintiff's Exhibit "J."

WESTERN UNION TELEGRAM.

Messrs. Beekman, Menken & Griscom,

Attorneys at Law,

52 Williams Street, New York, N. Y.

Answering your telegram February sixth if your

(Deposition of William A. Gilmore.)

clients willing comply with all terms my previous telegram suggest I will advise Greenberg to agree on deposit sum of ten thousand dollars of proceeds of note with Empire Trust Company your city to guarantee payment any judgment McLeod obtains against Greenberg. If this is satisfactory wire and we will forward note with satisfaction of mortgage with instructions to Empire Trust Company accordingly.

WILLIAM A. GILMORE.

[Endorsed]: #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp. Plts. Ex. "J." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. [123]

(Endorsed on Back): District Court, Alaska, 2d Div., Greenberg vs. Alaska Mines Corp., Plaintiff's Identification No. 10. Nome, Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) On the eighth day of February, 1918, I received a telegram from them, the original of which I have here.

Mr. O'NEILL.—I offer this telegram in evidence.

Mr. COCHRAN.—We object to the telegram as being irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant duly excepted and an exception was allowed. Said telegram being received in evidence and marked Plaintiff's Exhibit "K," and is as follows.

(Deposition of William A. Gilmore.)

Plaintiff's Exhibit "K."
NIGHT LETTERGRAM.

New York, Feb. 8-18.

William A. Gilmore

Golden West Hotel, San Francisco.

Your wire will communicate with McLeod and endeavor to arrange acceptance your proposition and wire you result, possible some delay account two holidays here next week.

BEEKMAN, MENKEN & GRISCOM.

(Endorsed): #2779. In the District Court Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff vs. Alaska Mines Corp., Defendant. Plts. Ex. "K." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. District Court, Alaska, 2d Div. Greenberg vs. Alaska Mines Corp. Plaintiff's Identification No. 11, Nome, Alaska. Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) I don't believe I heard anything more from them until the 20th of February, when I received a telegram from them the [124] original of which I have here.

Mr. O'NEILL.—I offer this telegram in evidence.

Mr. COCHRAN.—We object to the offer on the grounds that it is irrelevant and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant duly excepted and an exception was allowed. Said telegram being received in evidence, marked Plaintiff's Exhibit "L" and is as follows:

(Deposition of William A. Gilmore.)

Plaintiff's Exhibit "L."

WESTERN UNION TELEGRAM.

Received at Flood Bldg., 8 Powell St. & 890 Market
St., San Francisco.

Feb. 20, 1918.

Wm. A. Gilmore

Golden West Hotel, San Francisco.

McLeod away from city just returned refuses to
release attachment.

BEEKMAN, MENKEN & GRISCOM.

(Endorsed): #2779. In the District Court, Ter-
ritory of Alaska, Second Division. Herbert Green-
berg, Plaintiff, vs. Alaska Mines Corp., Defendant.
Plts. Ex. "L." Filed Feb. 21, 1919. Thos. Mc-
Gann, Clerk. By W. C. McG., Deputy. District
Court, Alaska, 2d Div. Greenberg vs. Alaska Mines
Corp. For identification, Pltffs. Ex. No. 12, Nome,
Alaska, Sept. 30, 1918. L. S. Kerr, Notary Public.

WITNESS.—(Continuing.) In their telegram
of February 8th, they say on account of certain holi-
days intervening they desired time—something to
that effect, and they took approximately two weeks,
pretty near, before they replied, and replied on the
20th, and after I received their telegram of the 20th
I either cabled them or wrote them a letter that I
considered the matter as closed and their answer as
final, and that I expected to begin foreclosure pro-
ceedings, but I have [125] mislaid the copy of the
letter or telegram, whichever it was, and cannot find
it, neither has Mr. Greenberg been able to find

(Deposition of William A. Gilmore.)

it among his papers. After this, I think I also received another telegram from them, stating that they would like to make some adjustment of the matter, if possible, and wanting to know if there was anything further that I could suggest. I haven't that telegram here, neither has Mr. Greenberg been able to find it, but any way they said they would like to make some adjustment, if it could be done. I wrote and told them that I considered we had made a very fair offer when we offered to put up ten thousand dollars of the proceeds of the note to guarantee payment of any judgment that might be obtained. I then waited two months and then cabled Mr. Hobbes to commence this suit in April some time.

Testimony of Morton Powell, for Plaintiff.

MORTON POWELL, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

I am not the agent of the Alaska Mines Corporation in Alaska. I do not know who is. I have worked for the Alaska Mines Corporation during the last summer out on this dredge.

Q. Is there any machinery on the ground adjacent to the dredge? A. Yes, sir.

Q. What is the character of that machinery?

A. It is equipment for a dredge, buckets, ladders and stackers.

Q. That machinery was brought there for the purpose of putting up this dredge? A. Yes, sir.

Q. And is still there on the ground?

A. Still on the ground.

Q. Adjacent to the dredge? A. Yes, sir. [126]

Testimony of E. W. Burroughs, for Plaintiff.

E. W. BURROUGHS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

I am employed by the Alaska Lighterage & Commercial Company. I receive freight directed to the Alaska Mines Corporation. The character of that freight received was mining machinery for a dredge, the machinery was delivered to the Alaska Mines Corporation, it was dredging machinery. I could not say as to where the machinery was taken. I weighed a great many of the loads taken out; it was hauled by C. L. Ross.

Testimony of Hugh O'Neill, for Plaintiff.

HUGH O'NEILL, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

I am one of the attorneys for Herbert Greenberg, and I hold this note for Twenty-five Thousand Dollars as attorney for Herbert Greenberg, and it is payable by the Alaska Mines Corporation. No sum of money has been paid upon this note except the sum of Twenty-five Hundred Dollars which is endorsed upon the note. Mr. Greenberg has been endeavoring to secure the payment of this note and has instituted for the foreclosure of the mortgage which was made at that time to secure the payment of the note. I am of the opinion that Three thousand dollars is a reasonable attorney's fee for the foreclosure of the mortgage.

(Testimony of Hugh O'Neill.)

Cross-examination.

(By Mr. COCHRAN.)

Q. You think that Three Thousand Dollars is a reasonable attorney's fee for the commencement and prosecution of this foreclosure?

A. To final judgment. Yes, I think so.

Q. From commencement to final judgment? [127]

A. Yes, sir; taking everything as a whole, before I get through with the suit, that Three Thousand Dollars will be a reasonable attorney's fee for Mr. Gilmore and myself.

(Witness excused.)

Mr. O'NEILL.—I now offer in evidence the exemplified copy of the order of the release of the judgment.

The COURT.—It may be received.

Said order of release received in evidence and marked Plaintiff's Exhibit "O," and is as follows:

Plaintiff's Exhibit "O."

No. —.

THE PEOPLE OF THE STATE OF NEW
YORK.

By the Grace of God Free and Independent.

To All to Whom These Presents Shall Come or May
Concern:

KNOW YE, that we having examined the records
and files in the office of the Clerk of the
(Seal) County of New York, and Clerk of the
Supreme Court of said State for said
County, do find there a certain order

remaining, in the words and figures following, to wit:

“At a Special Term of the Supreme Court, Part 1 thereof, held at the County Court House, City and State of New York, on the 27th day of September, 1918. Present, Hon. EUGENE A. PHILBIN, Justice.

No. 1260–1918.

GEORGE K. McLEOD,

Plaintiff,

vs.

HERBERT GREENBERG,

Defendant.

The defendant, Herbert Greenberg, having appeared in [128] this action, and having given an undertaking in the sum of five thousand two hundred forty-three and 44/100 (\$5,243.44) dollars to authorize the discharge of a lien of attachment obtained by the plaintiff herein on the defendant's bank account in the Hudson Trust Company, and of a certain note for twenty-five thousand (\$25,000) dollars, dated April 17th, 1917, made by the Alaska Mines Corporation, due on or before January 15th, 1918, with six (6%) per cent interest, and of the interest of the defendant as represented by the Empire Trust Company, as agent for the defendant, in said note made by the Alaska Mines Corporation, and having moved to discharge such attachment.

NOW, on reading and filing the affidavit of Powell Crichton, verified September 16th, 1918, in support, and the memorandum of Clarence S. Nettles in opposition to said motion, it is

ORDERED, that the attachment herein granted on the 15th day of January, 1918, against the property of the above-named Herbert Greenberg be, and the same hereby is discharged as to the whole of said property, and that the Sheriff deliver to the defendant the property so attached remaining in his hands, as required by law, and the Alaska Mines Corporation is hereby discharged from said attachment in every respect, and the Empire Trust Company, as agent for the defendant, is hereby discharged in every way from its claim, as said agent, against the said Alaska Mines Corporation, in respect to said note.

ENTER.

E. A. P.,
J. S. C.

(Endorsed on Back): County Clerk's Index, No. 1260-1918, Supreme Court County of New York, George K. McLeod, Plaintiff against Herbert Greenberg, Defendant. Copy Order. Henry Bradshaw, Attorney [129] for Defendant, Powell Crichton, Counsel. 120 Broadway, Borough of Manhattan, New York. Service of a copy of the within is this day admitted. Dated New York, 191. Attorney for ———.

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereto affixed. Witness: Hon. F. B. Delehanty, a Justice of the Supreme Court for the County of

New York, the 28th day of Sept., in the year of our Lord One thousand nine hundred and eighteen, of our Independence the one hundred and 45.

[Seal]

WM. F. SCHNEIDER,

Clerk.

F. B. Delehanty, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that William F. Schneider, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated New York, Sept. 28th, 1918.

F. B. DELEHANTY,

Justice of the Supreme Court of the State of New York.

State of New York,

County of New York,—ss.

I, William F. Schneider, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. F. B. Delehanty, whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, [130] duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 28th day of Sept. 1918.

[Seal]

WM. F. SCHNEIDER,

Clerk.

(Endorsed on Back): #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp. Defendant. Plts. Ex. "O." Filed Feb. 21, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. Hearing on defts. motion to make George K. McLeod, party plaintiff. #2779. In the District Court, Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corp. Defendant. Plts. Ex. "E." Filed Feb. 1, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy.

Testimony of O. D. Cochran, for Plaintiff.

O. D. COCHRAN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(By Mr. O'NEILL.)

Q. Do you recall a conversation between Mr. Greenberg, Mr. Gilmore and myself in your office with reference to this attachment that was some time prior to that time pending against this note?

A. At the time of taking the depositions?

Q. Yes, at the time of taking the depositions.

A. Yes, the matter was brought up in the taking of the depositions; I asked something myself about that.

Q. Do you remember the discussion prior to the

(Testimony of O. D. Cochran.)

taking of the depositions that Mr. Greenberg told you the attachment was released, that he put up a bond, and had received a wire to that effect?

A. I don't know whether prior, but there was such a conversation, I think at that time in my office between yourself—I won't [131] say who told me, either you or Mr. Gilmore or Mr. Greenberg; maybe all of you.

Q. That is all, Mr. Cochran.

The WITNESS.—Prior to that time I had never heard of the attachment alleged in the pleadings in New York being released.

Q. I understand you did not.

A. And I have never received any further notice of its having been released until you exhibited to me the exemplified copies of the order of release in the New York courts.

(Witness excused.)

Plaintiff rests.

Mr. COCHRAN.—The defendant now moves the Court to dismiss the complaint of the plaintiff for the reason and upon the ground that it is shown by the pleadings and by the evidence that one George K. McLeod is a necessary party to this action, and necessary to a complete determination of the action, being an assignee under contract of eleven-fortieths interest in the identical note sued upon and the mortgage sought to be foreclosed in this action.

The COURT.—Had I agreed with counsel I would have granted your motion to make McLeod a party. The motion is overruled. Anything further?

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I want to further move to dismiss the complaint of the plaintiff because it is shown upon the face of the note that the note is payable at the Empire Trust Company in the city of New York, and that tender was made, at the date that the same became due, to the Empire Trust Company of the amount due, which tender was refused by the Empire Trust Company by reason of its failure and inability to give the satisfaction of the mortgage sought to be foreclosed; and for the further [132] reason of an attachment being levied by one George K. McLeod in an action pending in the Supreme Court of the State of New York, for the County of New York, against the property of the plaintiff, Herbert Greenberg, in the hands of the defendant, Alaska Mines Corporation.

Which motion was by the Court overruled. To which ruling of the Court the defendant duly excepted, and an exception was allowed.

The COURT.—I think Three Thousand Dollars is too much for attorney's fees. I think ten per cent of the principal and interest would be sufficient, and you may compute your attorney's fee accordingly. Judgment will be in favor of the plaintiff and you may draw your finding and conclusions along that line.

Thereafter and on the 15th day of March, 1919, the Court duly signed its findings of fact and conclusions of law, and a decree herein, and the same

were duly filed in said court and cause, to the signing of which said findings of fact and conclusions of law and decree the defendant duly excepted, and an exception was allowed.

And now, in furtherance of justice, and that right may be done in the premises, the defendant presents the foregoing bill of exceptions, and prays that the same may be settled and allowed as the bill of exceptions in the above-entitled cause.

O. D. COCHRAN,

Attorney for Defendant. [133]

The foregoing bill of exceptions having been duly served, filed and presented within the time prescribed by law and the orders of this Court, and having been this day in open court agreed to by counsel for plaintiff and defendant; and the same being found by the Court to be full, true and correct, said bill of exceptions is hereby settled and allowed.

Done in open court this 12th day of May, 1919.

WM. A. HOLZHEIMER,

District Judge.

Service by receipt of a copy of the foregoing proposed bill of exceptions admitted this the 12 day of May, 1919.

HUGH O'NEILL,

Attorney for Plaintiff. [134]

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. May

12, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney or Defendant. Orders & Judgments, Vol. 11, p. 545. C. [135]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Petition for an Order Allowing Appeal.

Comes now the defendant, Alaska Mines Corporation, a corporation, and feeling itself aggrieved by the final judgment and decree made and entered in the above-entitled cause on the 15th day of March, 1919, in favor of the plaintiff and against the defendant, and hereby appeals from said final judgment and decree and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this, its appeal, may be allowed and that a transcript of the records and proceedings upon which said judgment and decree were made may be duly authenticated and sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that upon the giving of a supersedeas bond in the sum of twenty thousand dollars as hereinbefore fixed by an order of this Court that

execution of said judgment and decree and all further proceedings of this Court thereon be superseded and stayed.

Dated at Nome, Alaska, this 12th day of May, 1919. [136]

O. D. COCHRAN,
Attorney for Defendant.

Service of the above and foregoing petition for an order allowing an appeal is acknowledged by receipt of a copy thereof this 12th day of May, 1919.

HUGH O'NEILL,
Attorney for Plaintiff.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Petition for an Order Allowing Appeal. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. May 12, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant. [137]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Order Allowing Appeal.

Upon motion of O. D. Cochran, attorney for the above-named defendant, it is ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment and decree heretofore filed and entered herein on the 15th day of March, 1919, be, and the same is hereby allowed, and that a certified transcript of the records, testimony, exhibits, motions, orders, and all proceedings herein be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit. And it is further

ORDERED, that upon the defendant Alaska Mines Corporation giving the bond as heretofore fixed by the Court in the sum of Twenty Thousand Dollars, that all proceedings in this court be superseded and stayed.

Done in open court this 12th day of May, 1919.

WM. A. HOLZHEIMER,
District Judge.

Service of the above order admitted by receipt of a copy thereof, this 12th day of May, 1919.

HUGH O'NEILL,
Attorney for Plaintiff.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Order Allowing Appeal. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. May 12, 1919. Thos. McGann, Clerk. By W. C.

McG., Deputy, O. D. Cochran, [138] Attorney
for Defendant. Orders & Judgments, Vol. 11, p. 541.
C. [139]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Alaska Mines Corporation, a corpora-
tion, the defendant named in the foregoing entitled
action as principal, and the National Surety Com-
pany, a corporation organized and existing under the
laws of the State of New York, surety, are held and
firmly bound unto the plaintiff Herbert Greenberg
above named, in the sum of Twenty Thousand Dol-
lars, to be paid to the said plaintiff Herbert Green-
berg, his heirs or assigns, and to the payment of which
well and truly to be made, we bind ourselves and each
of ourselves jointly and severally, firmly by these
presents.

Sealed with our seals and dated this 12th day of
May, 1919.

The condition of the above undertaking and obliga-
tions is such that,

WHEREAS the above-named defendant Alaska Mines Corporation has filed its petition for an appeal and have [140] taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and decree in the above-entitled cause rendered by the above-entitled District Court for the Territory of Alaska, Second Division, on the 15th day of March, 1919; and

WHEREAS, the said defendant desires to secure the plaintiff in the payment of his costs and all damages which he may suffer by reason of such appeal, and also desires to have execution of such judgment and decree, and all other proceedings in said action superseded and stayed pending the final determination of said action upon appeal,

NOW, THEREFORE, if the above-named defendant Alaska Mines Corporation, a corporation, shall prosecute said appeal to effect, and answer all costs and damages if it fails to make good its said appeal, and shall pay or cause to be paid to the said plaintiff, his executors, administrators or assigns, all damages which he shall suffer by reason of such supersedeas and stay of execution, if the same shall be wrongful or without sufficient cause, then this obligation shall be void, otherwise to remain in full force and virtue.

Dated at Nome, in the Territory of Alaska, this 12th day of May, 1919.

ALASKA MINES CORPORATION,

Principal.

By O. D. COCHRAN,

Its Agent and Attorney.

[Seal of National Surety Company]

NATIONAL SURETY COMPANY,

Surety,

By G. R. JACKSON,

Its Attorney in Fact. [141]

United States of America,
Territory of Alaska,—ss.

On this, the 12th day of May, 1919, before me personally came G. R. Jackson, to me known and he being by me first duly sworn did depose and say:

That he resides in the town of Nome, Territory of Alaska; that he is the attorney in fact of National Surety Company, a corporation described in and who executed the foregoing undertaking as a surety thereon; that he is attorney in fact of said National Surety Company under special power of attorney duly executed by the said National Surety Company on the 16th day of April, 1919, and is authorized and empowered to execute the foregoing undertaking and signed the name of the National Surety Company thereto as a surety thereon; that he knows the seal of said corporation; that the seal affixed to the said undertaking is such corporate seal; that it was so affixed by affiant who is duly authorized to affix the same thereto.

G. R. JACKSON,

Subscribed and sworn to before me this 12th day of May, 1919.

[Notarial Seal] O. D. COCHRAN,
Notary Public in and for the Territory of Alaska.

(My commission expires on the 4th day of August, 1919.) [142]

Order Approving Bond.

The above and foregoing undertaking is hereby approved this 12th day of May, 1919, and execution and all other proceedings in said action are hereby superseded and stayed pending the final determination of this action, upon appeal.

WM. A. HOLZHEIMER,
District Judge.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Undertaking on Appeal. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division, at Nome. May 12, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant. [143]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
Defendant.

Assignment of Errors.

Comes now the above-named defendant Alaska Mines Corporation, and files the following assignment of errors upon which it will rely in the prosecution of its appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit:

I.

The Court erred in overruling defendant's demurrer to the complaint of the plaintiff filed in said cause.

II.

The Court erred in refusing and denying the motion of the defendant to make George K. McLeod a party to the said action.

III.

The Court erred and committed an abuse of discretion in denying the motion of defendant for a continuance of the trial of said action.

IV.

The Court erred in denying the motion of the defendant [144] made at the close of plaintiff's testimony to dismiss the complaint of the plaintiff for the reason and upon the grounds that it was shown by the pleadings and by the evidence that one George K. McLeod was a necessary party to this action and necessary to the complete determination of the action, being an assignee under contract of eleven-fortieths interest in the identical note sued upon and the mortgage sought to be foreclosed in this action.

V.

The Court erred in denying the motion of the de-

fendant to dismiss the complaint of the plaintiff because it was shown upon the face of the note that the note was payable at the Empire Trust Company in the city of New York and that tender was made on the date that the same became due, to the Empire Trust Company, of the amount due, which tender was refused by the Empire Trust Company by reason of its failure and inability to give the satisfaction of the mortgage sought to be foreclosed, and for the further reason that an attachment had been levied by one George K. McLeod in an action pending in the Supreme Court in the City of New York, for the County of New York, against the property of the plaintiff Herbert Greenberg in the hands of the Alaska Mines Corporation.

VI.

The Court erred in directing that ten per cent of the amount of principal and interest due upon *said should* be computed as attorney's fees in said action, because it is shown by the records and pleadings that at the time of the commencement of this action an attachment was levied against the amount due upon the identical promissory note sued upon [145] in this action in the hands of the Alaska Mines Corporation and in the hands of the Empire Trust Company, and that said attachment so levied was not released until the 27th day of September, 1918, and because said action having been prematurely commenced, no attorney's fees should be allowed in any event until the release of such attachment on the 27th day of September, 1918, and because there is no evidence as to the amount of a reasonable attor-

ney's fee in this action for the prosecution thereof after the date of the release of said attachment.

VII.

The Court erred in making its finding number "X" as follows:

"The Court finds that the plaintiff is the lawful owner and holder of said mortgage and said promissory note designated Schedule 'A.-3.' "

VIII.

The Court erred in making its finding numbered "XII" as follows:

"The Court finds there is due, owing and unpaid from defendant to plaintiff, in principal and interest, on said promissory note designated as Schedule 'A.-3,' the sum of Twenty-four Thousand Nine Hundred and Ninety Dollars (\$24,990.00)."

IX.

The Court erred in making its finding numbered "XIII" as follows:

"The Court finds that the sum of Twenty-four Hundred and Ninety-nine Dollars (\$2499.00) is a reasonable sum to be allowed for attorney's fees for the commencement and prosecution [146] of this action to foreclose said mortgage."

X.

The Court erred in making its finding numbered "XVIII" as follows:

"The Court finds that George K. McLeod has no interest in the note and mortgage sued upon in this action, and that the said George K. Mc-

Leod is not a proper or necessary party to this action.”

XI.

The Court erred in making its finding numbered “XX” as follows:

“The Court finds that the defendant never made any lawful tender to plaintiff of payment of said note on the 15th day of January, 1918, or at any time, or at all.”

XII.

The Court erred in making its finding numbered “XXIII” as follows:

“The Court finds that each and all of the allegations and averments in the first cause of action in plaintiff’s complaint contained are true and correct.”

XIII.

The Court erred in making its conclusions of law numbered “I” as follows:

“That the plaintiff, Herbert Greenberg, is entitled to a judgment and decree against the defendant, Alaska Mines Corporation, a corporation, for the sum of Twenty-four Thousand Nine Hundred and Ninety Dollars (\$24,990.00), with interest at the rate of eight per cent per annum from February 21st, 1919, being the date of the entry of decree herein, together with the [147] sum of Twenty-four Hundred and Ninety-nine Dollars (\$2499.00) as attorney’s fees in this action, and costs of suit taxed at the sum of \$——.”

XIV.

The Court erred in making its conclusion of law numbered "II" as follows:

"That the said judgment in favor of plaintiff, Herbert Greenberg, be adjudged a prior lien by virtue of the said mortgage upon all the real and personal property described therein, and that said mortgage therein mentioned be foreclosed in the manner provided by law, and the real and personal property therein described sold in the manner provided by law, and the proceeds thereof applied to the payment of the amount found due to the plaintiff on the said promissory note designated as Schedule 'A-3,' together with interest, attorney's fees and costs, and that any surplus be delivered to the said defendant."

XV.

The Court erred in making its conclusions of law numbered "III" as follows:

"That by virtue of the agreement between plaintiff herein and one George K. McLeod, described in paragraph XIV of defendant's answer and annexed thereto and marked Exhibit 'A' attached to Exhibit 'C,' plaintiff became a trustee of an express trust, and may sue without joining with him the person for whose benefit the action is prosecuted."

because that if the plaintiff did in fact and in law become a trustee of an express trust pursuant to any agreement with said [148] George K. McLeod, then such trust was terminated by the said George

K. McLeod long prior to the commencement of this action.

XVI.

The Court erred in making its conclusion of law numbered "IV" as follows:

"That no lawful tender of the amount due upon said note and mortgage sued upon herein has ever been made by defendant to plaintiff."

XVII.

The Court erred in ordering, adjudging and decreeing that the plaintiff Herbert Greenberg do have and recover of and from the defendant Alaska Mines Corporation, a corporation, the sum of Twenty-four Thousand Nine Hundred and Ninety (\$24,990.00) Dollars, with interest at the rate of eight per cent per annum from the 21st day of February, 1919, together with the sum of Twenty-four Hundred Ninety-nine (\$2499.00) Dollars attorney's fees and costs of suit; and that the real and personal property described in said mortgage be sold to satisfy said judgment and decree.

WHEREFORE the said defendant prays that the said judgment and decree of said District Court for the Territory of Alaska, Second Division, be reversed and set aside.

O. D. COCHRAN,

Attorney for Defendant.

Due service of the within assignment of errors is hereby acknowledged at Nome, Alaska, by receipt of a copy thereof, this 12th day of May, 1919.

HUGH O'NEILL,

Attorney for Plaintiff.

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division at Nome. May 12, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant. [149]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Order Extending Time to Docket Appeal.

Good cause appearing therefor, and upon motion of O. D. Cochran, attorney for the defendant in the above-entitled action, it is hereby ordered that the time for filing and docketing the transcript and records on the appeal in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, is hereby extended to September 1st, 1919.

Done in open court this the 7th day of June, 1919.

WM. A. HOLZHEIMER,

District Judge.

No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, Defendant. Order Extending Time to Docket Appeal. Filed in the Office of the Clerk of the District Court of the Territory of Alaska, Second Division at Nome. Jun. 7, 1919. Thos. McGann, Clerk. By W. C. McG., Deputy. O. D. Cochran, Attorney for Defendant. Orders & Judgments, Vol. 11, p. 541. C. [150]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
tion,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Thos. McGann, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 154, both inclusive, are a true and exact transcript of the complaint, demurrer, court minutes, June 15, 1918 (over-

ruling demurrer), answer as amended by interlineation, court minutes February 15, 1919 (granting leave to amend the original answer by interlineation, by the clerk), amended reply, findings of fact and conclusions of law, judgment, bill of exceptions, petition for an order allowing appeal, order allowing appeal, undertaking on appeal, assignment of errors and order extending time to docket appeal, in the case of Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant, No. 2779, this Court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Citation on Appeal in the above-entitled cause attached to this transcript.

Cost of transcript, \$66.80. [151]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 21st day of July, A. D. 1919.

[Seal]

THOS. MCGANN,
Clerk.

By _____
Deputy Clerk. [152]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2779.

HERBERT GREENBERG,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion,

Defendant.

Citation on Appeal.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to
Herbert Greenberg, the Plaintiff Above Named,
GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this citation, on the 11th day of June, 1919, pursuant to an order allowing an appeal, entered in the office of the Clerk of the District Court for the Territory of Alaska, Second Division, from the final decree and judgment filed and entered therein on the 15th day of March, 1919, in that certain suit wherein you, the said Herbert Greenberg, are the plaintiff and the Alaska Mines Corporation, a corporation, is defendant, to show cause, if any there be, why the said final decree and [153] judg-

ment rendered against the said defendant as in said order allowing appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 12th day of May, A. D. 1919, of the Independence of the United States, the one hundredth and forty-fourth.

WM. A. HOLZHEIMER,

District Judge.

ATTEST my hand and the seal of the District Court for the Territory of Alaska, Second Division, at the clerk's office, Nome, Alaska, this 12th day of May, 1919.

[Seal]

THOS. MCGANN,

Clerk of the District Court for the Territory of Alaska, Second Division.

Service of the above and foregoing citation acknowledged by receipt of a copy thereof, this 12th day of May, 1919.

HUGH O'NEILL,

Attorney for Plaintiff. [154]

[Endorsed]: No. 2779. In the District Court for the Territory of Alaska, Second Division. Herbert Greenberg, Plaintiff, vs. Alaska Mines Corporation, a Corporation, Defendant. Citation on Appeal.

[Endorsed]: No. 3378. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Mines Corporation, a Corporation, Appellant, vs. Herbert Greenberg, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Second Division.

Filed August 15, 1919.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.